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# TEXAS REGISTER

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*Morgan Unruh*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Request for Opinions

**RQ-0547-GA**

### Requestor:

The Honorable Jane Nelson  
Chair, Committee on Health and Human Services  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711

Re: Whether the legislature may constitutionally authorize electronic pull-tab bingo (Request No. 0547-GA)

### Briefs requested by December 11, 2006

**RQ-0548-GA**

### Requestor:

The Honorable Rob Baiamonte  
Goliad County Attorney  
Post Office Box 24  
Goliad, Texas 77963

Re: Whether a constable may simultaneously serve as a member of the Goliad County Groundwater Conservation District (Request No. 0548-GA)

## Briefs requested by December 11, 2006

**RQ-0549-GA**

### Requestor:

The Honorable Rob Baiamonte  
Goliad County Attorney  
Post Office Box 24  
Goliad, Texas 77963

Re: Proper disposal of vehicles used to transport illegal aliens and subsequently seized by a sheriff (Request No. 0549-GA)

### Briefs requested by December 11, 2006

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200606219  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 15, 2006

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

##### 19 TAC §233.12

The State Board for Educator Certification (SBEC) adopts on an emergency basis an amendment to §233.12, relating to categories of classroom teaching certificates. The section addresses certificates for career and technology education. The emergency amendment establishes in rule the new TExES-based Business Education: Grades 6 - 12 certificate.

The amendment is adopted on an emergency basis to take effect immediately pursuant to Texas Government Code, §2001.034, which provides for adoption of an emergency rule if a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice. The SBEC finds that the emergency amendment is necessary to comply with the requirements of state and federal law. This emergency action is necessary to allow the issuance of the new Business Education: Grades 6 - 12 certificate to individuals ready to apply for certification in November 2006. The first administration of the business education certification exam is scheduled for October 21, 2006, with the results to be released no earlier than November 10, 2006. Absent the emergency amendment to §233.12, applicants who apply for the Business Education: Grades 6 - 12 certificate before the permanent amendment can be adopted will not be approved because no authority in rule will exist to issue the certificate.

This emergency rule is also necessary to treat fairly under the law those educators who have acted in reliance on SBEC's administration of the examination to obtain the new business education certificate. Failure to adopt this rule may jeopardize the livelihood of those educators who require this certificate for employment in spring 2006. Additionally, this emergency rule is necessary to protect the public welfare in that school districts may be unable to offer certain required business education courses if there is a lack of certified teachers.

The emergency adoption reflects action previously taken by the SBEC in January 2004 to approve the new business education certificate. The SBEC approved the new business education

certificate in January 2004, but that certificate has not yet been adopted in rule. Subsequent rule changes to §233.12 did not add the new Business Education: Grades 6 - 12 certificate.

The emergency amendment to 19 TAC §233.12 adds the Business Education: Grades 6 - 12 certificate and specifies a date for issuance in subsection (g). The emergency amendment also includes language to require holders of the new business education certificate to attend and participate in a Career and Technology Education Professional Development Conference sponsored by the Texas Education Agency. In addition, a technical change will be made to update the section title.

The amendment is adopted on an emergency basis in accordance with Texas Government Code, §2001.034, and under Texas Education Code, §21.041(b)(2), which requires the SBEC by rule to specify the classes of certificates to be issued.

The emergency amendment implements Texas Education Code, §21.041(b)(2).

*§233.12. Career and Technology Education (Certificates not requiring experience and preparation in a skill area [skills areas]).*

(a) - (f) (No change.)

(g) Business Education: Grades 6 - 12. The Business Education: Grades 6-12 certificate may be issued no earlier than November 8, 2006. The holder of the Business Education: Grades 6-12 certificate may teach all Business Education courses in Grades 6 - 12. Teachers must also attend and participate in a Texas Education Agency sponsored Career and Technology Education Professional Development Conference.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606177

Raymond Glynn

Acting Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Effective Date: November 13, 2006

Expiration Date: March 12, 2007

For further information, please call: (512) 475-1497

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 26. PRACTICE AND PROCEDURE

##### 13 TAC §26.5, §26.27

The Texas Historical Commission proposes amendments to §26.5 (relating to Definitions) and §26.27 (relating to Disposition of Archeological Artifacts and Data) of Title 13, Part 2, Chapter 26 of the Texas Administrative Code (relating to Rules of Practice and Procedure under the Antiquities Code of Texas). The amendment to §26.5 amends the definition of "disposal" to include disposal after deaccession. The amendments to §26.27 are the result of the review of the certification process following the initial effort of the commission to implement the certification program. The amendment deletes a part of the section that was considered to be more appropriate in Chapter 29 of these rules, because it deals with the responsibilities of curatorial facilities, and this action has no effect on principal investigators and the Antiquities permit process.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rules are in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Oaks has also determined that for each year of the first five year period the rule amendments are in effect the public benefit anticipated as a result of these amendments will be improved care of artifacts and possibly decreased costs associated with the long-term curation of artifacts owned by the State of Texas. Additionally, Mr. Oaks has determined that there will be no effect on small and micro businesses. There will be no anticipated economic cost to persons who are required to comply with these rule amendments as proposed.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, Title 9, Chapter 191 which provides the commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by these amendments.

§26.5. *Definitions.*

The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accession--means the formal acceptance of a collection and its recording into the holdings of a curatorial facility and generally includes a transfer of title. For held-in-trust collections, stewardship but not title is transferred to the curatorial facility.

(2) - (16) (No change.)

(17) Curatorial facility--a museum or repository[; ~~school of higher education, institution, or governmental agency that engages in the permanent curation, conservation, storage, and/or displays of archeological or other cultural artifacts~~].

(18) - (25) (No change.)

(26) Disposal--means the discard of an object or sample after being recovered and prior to accession, or after deaccession.

(27) - (70) (No change.)

(71) State associated collections--means the collections owned by the State and under the authority of the commission. This includes the following:

(A) Permitted collections--means collections that are the result of work governed by the Texas Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the commission.

(B) Non-permitted collections--means collections that are the result of work governed by the Antiquities Code on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by commission personnel without the issuance of a permit.

(C) Purchased collections--means collections that are the result of the acquisition of significant historical items by the commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--means collections that are the result of a gift, donation, or bequest to the commission.

(E) Court-action collections--means collections that are awarded to the commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the commission by a court of law.

(72) - (74) (No change.)

§26.27. *Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data.*

(a) Processing. Investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, packaging in archival materials, and arranging for the curation of [and preserving] all collec-

tions, specimens, samples, and records, and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the commission are contained in the Texas Natural Resources Code, Section 191.052(b). The commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks, which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the commission that such antiquities shall never be used for commercial exploitation. (see also 13 TAC, §29.5)

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks. (see also 13 TAC, §29.5)

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the commission. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status. (see also 13 TAC, §29.5)

(2) Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes. (see also 13 TAC, §29.5)

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the commission. A variety of special, short-term exhibits may also be authorized by the commission. (see also 13 TAC, §29.5)

~~{(d) Access to antiquities for research purposes—antiquities retained under direct supervision of the commission will be available under the following conditions:}~~

~~{(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.}~~

~~{(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-permit reporting. A copy of the report will be provided to the commission.}~~

~~{(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the commission.}~~

~~{(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the commission.}~~

~~{(5) The commission may maintain a file of standard photographs and captions available for purchase by the public.}~~

~~{(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.}~~

~~{(7) Institutions, organizations, and agencies designated by the commission as depositories for antiquities collections shall promulgate reasonable rules and regulations governing access to those collections in their custody.}~~

~~{(e)}{(f)}~~ Pursuant to Texas Natural Resources Code sec. 191.091-092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The commission is charged with the administration of the Antiquities Code and exercises the authority of the State in matters related to these held-in-trust collections.

~~{(e)}{(f)}~~ Decisions regarding the disposal, deaccession, or destructive analysis of held-in-trust collections are the legal responsibility of the commission. Acceptable circumstances for disposal, deaccessioning, or destructive analysis are provided by these rules. Exceptions may be considered by the commission. Under no circumstances will held-in-trust collections be disposed of, or deaccessioned through sale.

~~{(f)}{(g)}~~ Disposal. the commission's rules for disposal applies to objects and samples prior to accessioning that have been recovered from a site on public lands or under public waters under an Antiquities Permit issued by the commission.

(1) Disposal of recovered objects or samples from a site on public lands or from public waters under an antiquities permit issued by the commission must be approved by the commission. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which the object or sample is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the commission prior to any disposal action.

(2) The appropriate reasons for disposal include, but are not limited to, the following:

(A) Objects that are highly redundant and without additional merit;

(B) Objects that lack historical, cultural, or scientific value;

(C) Objects that have decayed or decomposed beyond reasonable use and repair or that by their condition constitute a hazard to other objects in the collection.

(D) Objects that may be subject to disposal as required by federal laws.

(3) Items disposed of after recovery must be documented in the notes, and final report, with copies provided to the curatorial facility.

(4) The commission relinquishes title for the State to any object or sample approved for disposal. The object or sample must be disposed of in a suitable manner.

{(h) Deaccession. The commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the commission for the State. Thus, the decision to deaccession held-in-trust objects or collections is the responsibility of the commission. The commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.}

{(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.}

{(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the commission will not relinquish title in case the object, sample, or record subsequently is returned.}

{(i) Accredited curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these deaccessioning actions.}

{(1) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with this rule.}

{(2) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the commission.}

{(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the commission.}

{(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:}

{(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;}

{(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;}

{(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;}

{(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;}

{(E) Objects suspected as stolen from the collections must be reported to the commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;}

{(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility.}

{(G) Objects that may be subject to deaccessioning as required by federal laws.}

{(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the commission.}

{(j) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.}

{(1) If deaccessioning is due to theft or loss, the commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.}

{(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.}

{(k) Destructive Analysis. The commission's rules for destructive analysis applies only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these destructive analysis actions.}

{(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.}

{(2) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with these rules.}

{(3) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the commission.}

{(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.}

{(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.}

{(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the commission.}

{(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.}

{(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.}

{(9) The commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606133

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 463-1858



## CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

### 13 TAC §§29.4 - 29.6, 29.9

The Texas Historical Commission proposes amendments to Title 13, Part 2, Chapter 29 of the Texas Administrative Code (relating to Management and Care of Artifacts and Collections). The amendments include amendment of §29.4 (relating to Definitions) to add a definition of "conservation survey" to mean an evaluation of the state of a curatorial facility's performance in the process of cleaning, stabilizing, restoring, and preserving artifacts, and to amend the definition of "disposal" to include disposal after deaccession. A new §29.5 (concerning Disposition of Archeological Collections) is proposed, and the section incorporates provisions that were previously included in §26.27

of this title. The new section would contain provisions detailing the ownership of collections by the State of Texas, how curatorial facilities must house, preserve, provide access to, accession, deaccession, and analyze their state associated, held in trust collections. Section 29.6 (relating to Certification of Curatorial Facilities for State-Associated Held-in-Trust Collections) is amended to provide that a curatorial facility may be granted a one-time extension of the deadline to complete its self-evaluation not to exceed six months; to clarify that the criteria for evaluation of curatorial facilities for certification are mandatory, not directory; and to revise the criteria for evaluation to reflect the experience of the Commission in conducting the certification program. Section 29.9 (relating to Guidelines for Drafting an Collections Management Policy for Managing State-Associated Collections) is amended to change the name of the section to "Expectations for Drafting an Collections Management Policy for Managing State-Associated Collections;" to provide that self-insured governmental entities may apply for exemption from insurance requirements; and to update the language of the section to reflect the experience of the Commission in conducting the certification program.

These changes are needed to clarify the curatorial facility certification program of the commission regarding the collection, curation, deaccessioning, disposal, and destructive analysis of artifacts contained in state associated held in trust collections. The Texas Natural Resources Code makes all of these artifacts and collections the property of the State of Texas, and the Texas Historical Commission has authority over them. The revised sections establish a process for ensuring that the artifacts are properly curated, recorded, and, if appropriate, disposed of in conformance with appropriate standards established by the Commission

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Oaks has also determined that for each year of the first five year period the rule amendments and new section are in effect the public benefit anticipated as a result of these amendments and new section will be improved care of artifacts and possibly decreased costs associated with the long-term curation of artifacts owned by the State of Texas. Additionally, Mr. Oaks has determined that there will be no effect on small and micro businesses. There will be no anticipated economic cost to persons who are required to comply with these rule amendments and new section as proposed.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments and new section are proposed under the Texas Natural Resources Code, Title 9, Chapter 191 which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by the amendments and new section.

#### §29.4. Definitions.

The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (11) (No change.)

(12) Conservation Survey--means inspection and documentation by facility staff, of condition of collection objects on an ongoing basis as part of routine collections management work.

(13) [(42)] Cultural resource--means any building, site, district, structure, object, pre-twentieth century shipwreck, data, and locations of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, natural history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage, and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historical structures, local historical records, etc.

(14) [(43)] Curatorial facility--means a museum or repository.

(15) [(44)] Deaccession--means the permanent removal of an object or collection from the holdings of a curatorial facility.

(16) [(45)] Designated curatorial facility--means any curatorial facility that is holding or seeking to hold any state associated collection on behalf of the Commission.

(17) [(46)] Destructive analysis--means destroying all or a portion of an object or sample to gain specialized information. For purposes of these rules, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(18) [(47)] Disposal--means the discard of an object or sample after being recovered and prior to accession, or after deaccession.

(19) [(48)] Held-in-trust agreement--means the document signed by the Commission and the designated curatorial facility that provides for the transfer of stewardship to the curatorial facility for the state-associated collection, provides the state-associated collection's accession number and accessions inventory, and notes any conditions or restrictions.

(20) [(49)] Held-in-trust collection--means those state-associated collections under the authority of the Texas Historical Commission that are placed in a curatorial facility for care and management; stewardship is transferred to that curatorial facility but not ownership.

(21) [(20)] Inventory--means a physically-checked, itemized list of the objects in a curatorial facility's holdings. Itemized refers to having some sort of categorization, whether it be object-by-object or some type of grouping. Inventory is usually performed by numerical count, but weight may be considered in addition to or instead of a count, where it may be appropriate.

(22) [(21)] Museum--means a legally organized not-for-profit institution, essentially educational in nature; having a formally stated mission; with a professionally trained staff that uses and interprets objects for the public through regularly scheduled programs and exhibits; with a program of documentation, care, and use of collection or tangible objects; and having a program of maintenance and presentation of exhibits.

(23) [(22)] Political subdivision--means a local government entity created and operating under the laws of this state, including

a city, county, school district, or special district created under the Texas Constitution, Article III, Section 52(b)(1) or (2), or Article XVI, Section 59.

(24) [(23)] Preventive conservation--means to maintain the collections in stable condition through preventive maintenance, condition surveys, environmental controls, and pest management.

(25) [(24)] Public lands--means non-federal public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(26) [(25)] Relocation inventory--means a physically-checked, itemized list of a specific subset of objects that have been moved from their permanent location within the holdings of the curatorial facility.

(27) [(26)] Repository--means a permanent, not-for-profit educational or research-oriented agency or institution, having a professionally trained staff, that provides in-perpetuity legal housing and curation of collections.

(28) [(27)] Significance--means a trait attributable to sites, buildings, structures and objects of historical, architectural, and archeological (cultural) value which are eligible for designation to State Archeological Landmark status and protection under the Antiquities Code of Texas. Similarly, a trait attributable to properties included in or determined eligible for inclusion in the National Register of Historic Places.

(29) [(28)] Site--means any place or location containing physical evidence of human activity. Examples of sites include: the location of prehistoric or historic occupations or activities, a group or district of buildings or structures that share a common historical context or period of significance, and designed landscapes such as parks and gardens.

(30) [(29)] Spot-check inventory--means an organized location search to produce a physically-checked, itemized list of a predetermined subset of objects for which the curatorial facility is responsible.

(31) [(30)] State-associated collections--means the collections owned by the State and under the authority of the Texas Historical Commission. This includes the following:

(A) Permitted collections--means collections that are the result of work governed by the Texas Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the Commission.

(B) Non-permitted collections--means collections that are the result of work governed by the Antiquities Code on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by Commission personnel without the issuance of a permit.

(C) Purchased collections--means collections that are the result of the acquisition of significant historical items by the Commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--means collections that are the result of a gift, donation, or bequest to the Commission.

(E) Court-action collections--means collections that are awarded to the Commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the Commission by a court of law.

(32) ~~[(34)]~~ State Archeological Landmark--means any cultural resource or site located in, on, or under the surface of any lands belonging to the State of Texas or any county, city, or other political subdivision of the state, or a site officially designated as a landmark at an open public hearing before the Commission.

§29.5. Disposition of Archeological Collections.

(a) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the Commission are contained in the Texas Natural Resources Code, §191.052(b). The Commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks, which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the Commission that such antiquities shall never be used for commercial exploitation. (see also 13 TAC, §26.27)

(b) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks. (see also 13 TAC, §26.27)

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at a curatorial facility certified by the Commission. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status. (see also 13 TAC, §26.27)

(2) Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes. (see also 13 TAC, §26.27)

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the Commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the Commission. A variety of special, short-term exhibits may also be authorized by the Commission. (see also 13 TAC, §26.27)

(c) Access to antiquities for research purposes--antiquities retained under direct supervision of the Commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-permit reporting. A copy of the report will be provided to the Commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research

culminating in nonprofit reporting. A copy of the report will be provided to the Commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the Commission.

(5) The Commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Curatorial facilities certified by the Commission shall promulgate reasonable procedures governing access to those collections under their stewardship.

(d) Deaccession. The Commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the Commission for the State. Thus, the decision to deaccession held-in-trust objects or collections is the responsibility of the Commission. The Commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the Commission will not relinquish title in case the object, sample, or record subsequently is returned.

(e) Certified curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these deaccessioning actions.

(1) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit written deaccession

requests of objects and samples from held-in-trust collections to the Commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the Commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the Commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility;

(G) Objects that may be subject to deaccessioning as required by federal laws; and

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the Commission.

(f) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, Commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the Commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the Commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(g) Destructive Analysis. The Commission's rules for destructive analysis apply only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of categories of objects and samples from held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(2) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the Commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the Commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The Commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

*§29.6. Certification of Curatorial Facilities for State-Associated Held-in-Trust Collections.*

(a) Establishment of certification program.

(1) - (5) (No change.)

(6) This section does not apply to the [temporary] loan of a collection or a component of a collection to a facility not certified by the Commission.

(7) - (9) (No change.)

(b) Procedures for Certification.

(1) (No change.)

(2) Submission of written materials for certification.

(A) (No change.)

(B) The self-evaluation and other materials must be submitted to the Commission within six months after the certification

review packet is mailed. A one time extension not to exceed six months may be granted by the Commission staff upon request.

(C) - (F) (No change.)

(3) (No change.)

(4) Consideration by the Commission.

(A) - (C) (No change.)

(D) If a curatorial facility is certified with existing disabling factors or deficiencies, [a monitoring process will assure that] these factors must be [problems are] addressed before subsequent certification can take place. The curatorial facility must submit a plan and schedule for correcting the factors to the Commission within 90 days of the notice of certification. The Commission shall consider the plan and schedule and either approve it or return it to the curatorial facility with suggested revisions. The curatorial facility shall resubmit the plan and schedule until approved by the Commission. If these factors have not been addressed by the end of its certification period, then the curatorial facility will be decertified at the end of the certification period. The curatorial facility must wait two years before reapplying for certification, at which time it will be certified only if it has addressed all prior deficiency and disabling factors.

(E) Provisional status.

(i) If the Commission determines that the curatorial facility does not meet all of the qualifications for certification, but should be granted provisional status, the curatorial facility must submit a plan and schedule for correcting the factors [problems] to the Commission within 90 days of the approval of provisional status. The Commission shall consider the plan and schedule and either approve it or return it to the curatorial facility with suggested revisions. The curatorial facility shall resubmit the plan and schedule until approved by the Commission. If such factors [problems] are addressed and appropriate evidence of such measures is presented to the Commission, the Commission may grant certification to the curatorial facility at the next succeeding quarterly meeting of the Commission.

(ii) - (iii) (No change.)

(F) (No change.)

(c) (No change.)

(d) Criteria for Certification. Each applicant for certification must meet the following criteria to be certified.

(1) - (3) (No change.)

(4) The following certification criteria will be used to evaluate curatorial facilities:

(A) (No change.)

(B) Clear Fiscal Plan [Finanee].

~~[(i) clear fiscal plan;]~~

~~[(ii) financial reporting system, with an external audit; and]~~

~~[(iii) continued efforts to raise level of support.]~~

(C) Policy [Policies]. Written, integrated collections management policy [policies] addressing:

(i) - (xvii) (No change.)

~~(xviii) emergency preparedness [disaster management];~~

(xix) integrated pest management; and

(xx) (No change.)

(D) Procedures. Written, integrated collections management procedures addressing:

(i) (No change.)

(ii) held-in-trust agreement;

(iii) ~~[(ii)]~~ accessioning;

~~(iv) [(iii)] deaccessioning and disposal of collections or collection items;~~

~~[(iv)] documentation;]~~

(v) - (viii) (No change.)

(ix) insurance;

~~[(ix) environmental control (lighting, temperature, relative humidity, air particulates);]~~

~~[(x) conservation assessment;]~~

~~[(xi) housekeeping;]~~

~~[(xii) cleaning, packaging, and housing of collections;]~~

~~[(xiii) packing and shipping of collections;]~~

(x) ~~[(xiv)]~~ access to collections;

(xi) record keeping;

(xii) collections care;

(xiii) conservation;

(xiv) emergency preparedness;

~~[(xv) written disaster management plan addressing;]~~

~~[(I) accidents;]~~

~~[(II) fire; ]~~

~~[(III) flood; and]~~

~~[(IV) other natural disasters;]~~

~~(xv) [(xvi)] integrated [written] pest management [plan]; and~~

~~(xvi) [(xvii)] [written] security [plan].~~

(E) (No change.)

(F) Staff.

(i) (No change.)

~~[(ii) written personnel policy;]~~

(ii) ~~[(iii)]~~ written job descriptions;

~~[(iii) [(iv)] minimum one full-time staff member trained in collections care; and~~

~~(iv) [(v)] support for staff training programs in collections care and memberships to museum-related organizations.~~

(G) (No change.)

(H) Records management.

(i) - (ii) (No change.)

~~(iii) baseline inventory of each held-in-trust state-associated collection [collections].~~



(I) Collections care.

(i) housing;

~~{(I) current floor plan;}~~

(I) ~~{(H)}~~ appropriate housing units with adequate and appropriate space; and

(II) ~~{(H)}~~ accessible and organized collections.~~;~~

(ii) (No change.)

(e) Application of criteria. In making the determination of certification status, all of the above criteria are considered. In particular, at the Application stage, the curatorial facility must fit the definition; have a mission statement, a statement of purpose, and a scope-of-collections statement; and have a written integrated collections management policy. If the curatorial facility does not meet these three basic criteria, then certification is denied and the process goes no further. At the Commission level, disabling factors could prevent certification. Deficiency factors could result in provisional status or denial. Where appropriate, the criteria for evaluation for curatorial facilities to be developed by the commission will contain objective standards against which disabling and deficiency factors are measured.

(1) (No change.)

(2) Deficiency factors are the following:

(A) - (H) (No change.)

(I) incomplete cataloging of held-in-trust state associated collections;

(J) ~~{(H)}~~ inadequate inventory system;

(K) ~~{(H)}~~ substandard environmental controls (temperature, relative humidity, air particulates);

(L) ~~{(K)}~~ substandard fire prevention, detection, or suppression programs;

(M) ~~{(L)}~~ substandard physical facilities;

(N) ~~{(M)}~~ substandard housing or housing conditions; and

(O) ~~{(N)}~~ substandard packaging.

§29.9. Expectations [Guidelines] for Drafting a Collections Management Policy for Managing State-Associated Collections.

(a) - (c) (No change.)

(d) Inventory.

(1) (No change.)

(2) Inventories by a Curatorial Facility. For collections or historical items placed at a designated curatorial facility, the following requirements apply. Inventories for state-associated collections ~~[may]~~ include the following:

(A) - (C) (No change.)

(3) The Director of the curatorial facility is responsible for maintaining the inventory of the state-associated held-in-trust collections and for seeing that appropriate and timely inventories are conducted. The types and frequency of inventories must be outlined in the curatorial facility's collections management policy. Accessions inventories must be conducted and included as part of the held-in-trust agreement. ~~[A site inventory must be conducted and updated and a copy sent to the Commission to provide an accurate listing of all state-associated held-in-trust collections housed at the curatorial facility.]~~ A relocation

inventory must be conducted and included as part of the loan agreement of state-associated held-in-trust collections. Spot check inventory must be conducted as a part of collection management activities. Other types of inventories should be conducted to provide tracking and security information as necessary.

(4) An accurate listing of all state associated held-in-trust collections and the sites they represent, must be conducted and updated and a copy sent to the Commission.

(5) ~~{(4)}~~ Authority to deal with missing and stolen objects, samples, documentation, and historical items of approved categories from state-associated collections is delegated to a curatorial facility certified by the Commission through an agreement between the Commission and the curatorial facility.

(A) Annual reports will be submitted to the Commission on these inventory and security actions. Suspected stolen material must be reported to appropriate law enforcement agencies with notification to other curatorial facilities and appropriate organizations.

(B) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(6) ~~{(5)}~~ Curatorial facilities not certified by the Commission shall submit a written plan for conducting an inventory of state-associated held-in-trust collections.

(7) ~~{(6)}~~ Missing or stolen objects, samples, documentation, and historical items from state-associated held-in-trust collections must be reported to the Commission in writing immediately upon discovery with a determination of whether misplaced or stolen. Suspected stolen material must be reported to appropriate law enforcement agencies with notification to curatorial facilities and appropriate organizations.

(e) Loans.

(1) For collections or historical items placed at a ~~[designated]~~ certified curatorial facility, the following requirements apply:

(A) Decisions regarding the loan of state-associated collections are the legal responsibility of the Commission but the responsibility for ~~[the administration of]~~ the loan ~~[loans]~~ is delegated to the curatorial facility.

(B) The Director of the curatorial facility is responsible for all loan transactions of state-associated collections and for assuring that appropriate and timely administration of loans is ~~[are]~~ conducted. Relocation inventories must be conducted and included as part of the written loan agreement. Other loan conditions must be addressed in the Collections Management Policy of the curatorial facility.

(C) (No change.)

(2) (No change.)

(f) Destructive Loans.

(1) For collections or historical items placed at a designated curatorial facility, the following requirements apply:

(A) (No change.)

(B) Authority to deal with destructive analysis requests of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by

the Commission through an agreement between the Commission and the curatorial facility.

(2) - (4) (No change.)

(g) Collections Care.

(1) - (7) (No change.)

(8) Records should be made in a timely fashion, housed in secure locations, provide for easy retrieval of information on and location of an object, sample, documentation, or historical item, and be preserved by proper handling and storage. A duplicate copy of appropriate [accession] records should be made and stored at a location other than the curatorial facility as a security precaution.

(9) Insurance is integral to the protection of state-associated collections but is supplemental to sound collection management and risk management practices. Governmental entities that are self insured, may request a waiver from the insure requirements under this chapter. [All-risk insurance is required on all out-going loans of state-associated collections and normally is provided by the borrowing institution. The curatorial facility must provide the Commission with evidence of a policy of insurance in force for the duration of the loan from an insurance company licensed to do business in Texas and/or the location where the collection will be held during the period of the loan; for all risks and in an amount appropriate to the value of the collection.]

(10) All-risk insurance is required on all out-going loans of state-associated collections and normally is provided by the borrowing institution. The curatorial facility must provide the Commission with evidence of a policy of insurance in force for the duration of the loan from an insurance company licensed to do business in Texas and/or the location where the collection will be held during the period of the loan, for all risks and in an amount appropriate to the value of the collection.

(11) ~~[(10)]~~ The curatorial facility will cooperate fully with the Commission in its efforts to monitor the state-associated collections.

(h) Conservation.

(1) - (2) (No change.)

(3) The curatorial facility endorses the conservation philosophy of minimal chemical and physical trauma to the object, documentation, or historical item, use of sympathetic materials, the principle of reversibility, and the keeping of complete and accurate records of the conservation process. Conservation survey [assessments] and monitoring of object, documentation, or historical item condition are ~~[encouraged as]~~ part of the curatorial facility's management plan for state-associated collections.

(4) - (5) (No change.)

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606141

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 463-1858

## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

##### SUBCHAPTER J. CERTIFICATION REQUIREMENTS FOR EDUCATORS OTHER THAN CLASSROOM TEACHERS AND EDUCATIONAL AIDES

###### 19 TAC §230.305

The State Board for Educator Certification (SBEC) proposes an amendment to §230.305, relating to certification requirements for educators other than classroom teachers and educational aides. The section addresses the issuance of temporary certificates. The proposed amendment would establish a deadline of March 31, 2007, for issuing the temporary certificate for assistant principal, principal, and superintendent positions. Although the SBEC previously approved amending 19 TAC §230.305 to establish a deadline in rule, the amendment was never filed with the Texas Register.

19 TAC §230.305, Temporary Certificate, provides for a five-year temporary certificate for school administrators in the positions of assistant principal, principal, and superintendent, while completing the certification requirements. Section 232.4, Probationary Certificates, adopted effective October 2003, provides for a probationary certificate for a person enrolled in an educator preparation program. The holder of a probationary principal or superintendent certificate would be enrolled in an educator preparation program and employed by an accredited Texas public or private school in a position appropriate for the certificate sought. The probationary certification process, which also includes mentoring support and internship, replaces the temporary certification process. The majority of administrators in Texas currently use the probationary and standard certificates. Although there is no specific probationary certificate for an assistant principal, the holder of a probationary principal certificate may be assigned as an assistant principal.

In May 2004, the SBEC approved an amendment to establish a deadline of May 31, 2005, to apply for the temporary certificate; however, the rule amendment was not subsequently filed as adopted as required and, therefore, automatically withdrawn by the Texas Register. In July 2005, the SBEC restarted the process for amending 19 TAC §230.305 by approving an amendment to establish a deadline of December 31, 2005, to apply for a temporary certificate; however, the rule was not subsequently filed with the Texas Register as required. Both efforts to amend 19 TAC §230.305 were reviewed by the State Board of Education and no action was taken.

The proposed amendment to 19 TAC §230.305 would establish a March 31, 2007, deadline in new subsection (d) for issuing a temporary certificate for the administrator positions of assistant principal, principal, and superintendent. Requirements for the temporary five-year administrator certificates are not aligned with current principal and superintendent standards and do not require supervision or mentoring of the beginning administrator.

The proposed amendment would also include language to allow a temporary certificate issued on or before March 31, 2007, under §230.305 to remain effective until the certificate's stated expiration date.

In addition, non-substantive, technical edits would be made to §230.305 for consistency.

Raymond Glynn, acting associate commissioner for educator quality and standards, has determined that, for each year of the first five years the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Glynn has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to have the certificates for administrators aligned with the same timelines and structure of teacher certificates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under Texas Education Code, §21.041(b)(2), which requires the SBEC by rule to specify the classes of certificates to be issued.

The proposed amendment implements Texas Education Code, §21.041(b)(2).

§230.305. *Temporary Certificate.*

(a) (No change.)

(b) Certificate requirements. The appropriate temporary certificate shall be issued upon the recommendation of an approved educator preparation program to a person meeting the following requirements.

(1) Assistant principal. The individual must:

(A) - (B) (No change.)

(C) have completed two creditable years, as defined in Subchapter Y of this chapter [~~Chapter~~] (relating to Definitions), of classroom teaching experience;

(D) have completed a minimum of 12 graduate hours of the common administrative core required for the administrator's certificate; and

(E) (No change.)

(2) Principal. The individual must:

(A) - (B) (No change.)

(C) have completed two creditable years, as defined in Subchapter Y of this chapter [~~Chapter~~], of classroom teaching experience;

(D) have completed a minimum of 12 graduate hours of the required common core for administrators in the courses designed to develop general administrative competence and understanding; and

(E) (No change.)

(3) Superintendent. The individual must:

(A) hold an administrator's certificate; and

(B) be admitted to the superintendent's program of the preparation program recommending him or her.

(c) (No change.)

(d) Deadline for certificate issuance. Effective March 31, 2007, no certificate will be issued pursuant to this section. However, any certificate issued pursuant to this section on or before March 31, 2007, will remain effective until its stated expiration date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606178

Raymond Glynn

Acting Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER D. PROCEDURES AFTER HEARING

##### 22 TAC §519.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.72 concerning Final Decisions and Orders.

The amendment to §519.72 will place the responsibility of determining final responsibility for sanctions with the Board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not address revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification regarding the Board's ultimate responsibility in imposing sanctions.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose costs on such persons.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 27, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### *§519.72. Final Decisions and Orders.*

(a) All final decisions and orders of the board shall be made during a public meeting duly noticed pursuant to the chapter 551 of the Government Code (relating to Open Meetings). The board's decisions and orders shall be in writing and reported in the minutes of the meeting. A final order of the board shall include findings of fact and conclusions of law, separately stated.

(b) A copy of the final decision or order of the board shall be delivered or mailed to all parties or, if represented by counsel, to their attorney of record.

(c) It is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the proposed order is:

- (1) erroneous;
- (2) against the weight of the evidence;
- (3) based on unsound accounting principles or auditing standards;
- (4) based on insufficient review of the evidence;
- (5) not sufficient to protect the public interest;

(6) not sufficient to adequately allow rehabilitation of the licensee;

(7) an infringement on the board's discretion to determine the board's policies; or

(8) to correct a technical error.

(d) If the board modifies, amends, or changes the ALJ's recommended order, an order shall be prepared reflecting the board's changes and the board's specific reasons and legal basis [justification] for the changes.

(e) A final order or board decision is administratively final when:

(1) there is no filing of a timely motion for rehearing, upon the expiration of 20 days from the date the final order or board decision is entered; or

(2) a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law.

(f) The board shall make the final decision in all disciplinary matters, including the assessment of sanctions.

(g) Interpretive comment. Section 2001.058 of the Administrative Procedure Act provides the standards that a governmental agency must follow in changing a recommendation of an Administrative Law Judge of the State Office of Administrative Hearings. Case law makes it clear that the standards must be strictly adhered to in order to be valid. The above language addresses the required standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606149

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 305-7848

## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER V. FRANCHISE TAX**

###### **34 TAC §3.594**

The Comptroller of Public Accounts proposes new §3.594, concerning margin: temporary credit. In accordance with 79th Legislature, 2006, 3rd Called Session, House Bill 3, this new rule is proposed to extend the preservation date for the temporary credit. Pursuant to the comptroller's authority under Tax Code, §111.051, the due date for filing the required notice of intent is changed from March 1, 2007 to September 1, 2007.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing a taxable entity additional time to notify the comptroller in writing of its intent to preserve the right to take the temporary credit established by 79th Legislature, 2006, 3rd Called Session, House Bill 3. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §171.111.

§3.594. Margin: Temporary Credit.

(a) Effective Date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008.

(b) Notice of intent. The notice of intent to preserve the right to claim the temporary credit under Tax Code, §171.111, must be submitted to the comptroller on forms specified by the comptroller. The form must be filed on or before September 1, 2007. The postmark date (or meter-mark date, if there is no postmark) on the envelope in which the form is received determines the date of filing. The preservation of the right to claim the credit may not be conveyed, assigned, or transferred to another entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606082

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0387



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES**

## **SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS**

### **37 TAC §4.1**

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

Amendments to §4.1 are necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through November 1, 2006.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on November 30, 2006, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Government Code, §411.018, and Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-2116 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas

Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

**§4.1. Transportation of Hazardous Materials.**

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through November [July] 1, 2006. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through November [July] 1, 2006.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers

for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 8, 2006.

TRD-200606125

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 424-2135



## SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

### 37 TAC §§4.11 - 4.13

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11 - 4.13 concerning Regulations Governing Transportation Safety.

Amendment to §4.11 updates the rule so that it reflects November 1, 2006 in subsection (a). The amendment is necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date for the subchapter. An amendment to §4.11(c)(2) is necessary so that the language in this provision is consistent with amended language recently made in Title 49, Code of Federal Regulations, Part 392.9a, to which it refers.

Amendments to §4.12 are necessary in order to correct inaccuracies in citing certain parts of Title 49, Code of Federal Regulations.

Amendments to §4.13 are necessary in order to clarify the certification requirements for inspections conducted on passenger vehicles and on vehicles transporting hazardous materials in Other Bulk Packaging.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on November 30, 2006, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §§4.11 - 4.13 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-2116 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

#### *§4.11. General Applicability And Definitions.*

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through November [July] 1, 2006. All other references in this subchapter [subcategory] to the Code of Federal Reg-

ulations also refer to amendments and interpretations issued through November [July] 1, 2006. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,

(4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) regional highway administrator means the director of the Texas Department of Public Safety;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and

(D) a vehicle transporting hazardous material requiring a placard.

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "operating authority" ["registration"] as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

#### §4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or,

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following eight consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for eight consecutive hours.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Parts 40 and 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, Part 395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(6) Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.



(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except §396.17.

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) Title 49, Code of Federal Regulations, Part 393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(4) Title 49, Code of Federal Regulations, Part 391.11(b)(1) [~~391.11b(1)~~], is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(5) Title 49, Code of Federal Regulations, Part 391.11(b)(2) [~~391.11b(2)~~], is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(6) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(7) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(8) Title 49, Code of Federal Regulations, Part 380, (Subparts A - D), is not adopted for intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, Part 380.500 on or before July 31, 2005.

(9) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, Part 395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

#### *§4.13. Authority to Enforce, Training and Certificate Requirements.*

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of two million or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; or

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department,

may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

- (A) a county bordering the United Mexican States, or
- (B) a county with a population of 2.2 million or more.

(6) A constable, or deputy constable, designated under Texas Transportation Code, §621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.

(7) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course;

(D) successfully complete the Other Bulk Packaging Course; and

(E) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing hazardous materials in other bulk packaging. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, at least eight [of the] inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in other bulk packaging per calendar year. Level I inspections on vehicles containing other bulk packaging may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight [of the] inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after al-

lowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 8, 2006.

TRD-200606126

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 424-2135



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

#### SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

##### 37 TAC §439.7

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §439.7, concerning eligibility to take a commission examination, in Chapter 439, entitled Examinations for Certification. The purpose of the proposed amendment is to address a situation in which an individual's test score has expired and that individual is testing so they may be eligible to apply for IFSAC seals.

Subsection (a) currently does not allow an individual who currently holds an active certificate from the commission in a discipline to take an examination in that same discipline, unless required by the commission in a disciplinary matter. The proposed amendment adds a second exception for an individual whose test score has expired is testing to re-establish eligibility for IFSAC seals.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that, for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be that an individual may test for a certification they hold so they may be eligible to apply for an IFSAC seal in that discipline if they do not have a valid test in effect at that time. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

*§439.7. Eligibility.*

(a) An examination may not be taken by an individual who currently holds an active certificate from the commission in the discipline to which the examination pertains, unless required by the commission in a disciplinary matter, or test scores have expired and the individual is testing for IFSAC seals.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606166

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 936-3821



## CHAPTER 441. CONTINUING EDUCATION

### 37 TAC §441.5

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §441.5, concerning continuing education requirements, in Chapter 441, entitled Continuing Education. The purpose of the proposed amendment is to address a previous omission regarding fire departments keeping records of exemptions from continuing education requirements that are reported to the Commission.

The proposed amendment adds, in subsection (j), that a copy of the record of exemptions from continuing education requirements due to documented illness, injury, or activation to military service reported to the Commission shall be kept with the fire department continuing education records for three years.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that, for the first five year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that, for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be better record-keeping by fire departments in the state. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

*§441.5. Requirements.*

(a) - (i) (No change.)

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable renewal period(s). Such exemptions shall be reported by the head of the department to the commission at renewal time, and a copy kept with the department continuing education records for three years.

(k) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606167

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 936-3821



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 811, relating to Choices:

Subchapter C, Choices Services, §§811.29 - 811.34

The Commission proposes amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A, General Provisions, §§811.1 - 811.3

Subchapter B, Choices Services Responsibilities, §§811.11 - 811.16

Subchapter C, Choices Services, §§811.21 - 811.28

Subchapter D, Choices Work Activities, §§811.41 - 811.51

Subchapter E, Support Services and Other Initiatives, §§811.61, 811.62, and 811.65 - 811.67

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 811, relating to Choices:

Subchapter C, Choices Services, §§811.29 - 811.32

Subchapter D, Choices Work Activities, §811.52

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this amendment is to implement the regulatory requirements issued by the United States Health and Human Services Department (DHHS). The interim final regulations (interim regulations) issued by DHHS contain new provisions related to Temporary Assistance for Needy Families (TANF) work activities. In addition, technical changes are needed for clarification and consistency throughout Chapter 811.

In February 2006, the Deficit Reduction Act (DRA) of 2005 reauthorized the TANF program. In addition to providing ongoing funding for TANF, DRA also changes several provisions in law related to TANF work participation. DRA directed DHHS to issue regulations regarding:

--allowable work activities;

--verification, documentation, and internal control procedures; and

--inclusion of certain child-only cases in the calculation of work participation rates.

On June 29, 2006, DHHS issued its interim regulations (*Federal Register*, Volume 71, Number 125), which provide definitions for each allowable work activity including additional provisions for supervision, verification, and documentation for each allowable work activity.

The interim regulations also introduce a new term--*work-eligible individuals*--defined as parents who are included in the calculation of work participation rates. The new definition adds certain child-only cases to the calculation of federal work participation rates. Modification of current definitions and addition of new definitions to identify individuals eligible for or participating in Choices services are proposed to simplify and clarify the Choices service delivery for the Local Workforce Development Boards (Boards).

The interim regulations became effective on October 1, 2006, and Boards were informed of the major changes affecting Choices services prior to proposed amendments to Chapter 811. Boards have been advised to provide Choices services within the parameters of the interim regulations when provisions of Chapter 811 are not supported by the interim regulations. While there may be more stringent requirements under this

chapter, the Commission's intent is to provide the Boards the same flexibility offered under the interim regulations.

In addition to the changes made to comply with the interim regulations and to align the rules with other current federal regulations, technical changes are made to:

--simplify and clarify rule language;

--update terminology and definitions;

--remove obsolete provisions; and

--update statutory citations.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes amendments to Subchapter A, as follows:

#### §811.2. Definitions.

Section 811.2(2), the definition of "TDHS--The Texas Department of Human Services," is removed. TDHS is now named the Texas Health and Human Services Commission (HHSC) and is defined in §811.2(8). References to TDHS are changed throughout this chapter to reflect this name change.

Section 811.2(2) replaces the term "Choices individual" with "Choices eligible" to clarify which individuals are eligible to receive Choices services.

New §811.2(3) adds a definition for Choices participant. Section 811.2(3)(A) defines an "exempt Choices participant" as an adult or teen head of household who is not required under Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC Chapter 372, Texas Works) to participate in Choices services, but may volunteer to participate. Section 811.2(3)(B) defines a "mandatory Choices participant" as an adult or teen head of household, including extended TANF recipients, conditional applicants, and sanctioned families, as defined in this section, who are required under HHSC rules to participate in Choices services. The intent of consolidating these definitions is to simplify language throughout the rules and to distinguish between those individuals who are eligible for Choices services--i.e., Choices eligibles--and those individuals who are participating in Choices services--i.e., Choices participants.

New §811.2(5) clarifies the definition of Earned Income Deduction (EID). Individuals who are working and receiving TANF cash assistance can receive the EID regardless of how many hours they work or how much they earn. Current language in Chapter 811 does not differentiate between individuals who receive the EID and are working fewer than 30 hours per week and individuals who are employed 30 hours per week or more. Specific exclusions or responsibilities listed throughout Chapter 811 for "EID individuals" are applicable only to those individuals coded by HHSC as working 30 hours per week, earning at least \$700 per month, and receiving EID.

Section 811.2(6), the definition of mandatory individual, is removed. Section 811.2(3), the definition of Choices participant, includes mandatory individuals.

New §811.2(6) clarifies that the 60-month time limit for TANF cash assistance is federally imposed.

Section 811.2(10) removes references to exempt and mandatory recipients from the definition of "recipient." These references are now found in §811.2(3)(A) and (B), relating to the definition of a Choices participant. The definition of recipient retains the prior references to an extended TANF recipient or former recipient formerly set forth in §811.2(8)(B) and (C), which now are separate definitions set forth in §811.2(6) and (7).

Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

#### §811.3. Choices Services Strategy.

Section 811.3(c)(2)(D)(i) clarifies that Choices eligibles authorized to receive post-employment services include mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID.

Section 811.3(c)(7)(B) adds the term "federal" to clarify that the 60-month TANF time limit for TANF cash assistance is federally imposed.

### SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission proposes amendments to Subchapter B, as follows:

#### §811.11. Board Responsibilities.

Section 811.11(a)(2) specifies that applicants and conditional applicants have 10 days from the date of their eligibility interview to attend a Workforce Orientation for Applicants (WOA).

Section 811.11(a)(3)(A) specifies that applicants and conditional applicants are informed of employment services available while attending a WOA.

Section 811.11(c) replaces the term "recipient status" with the term "a Choices participant's eligibility" for better clarification.

Section 811.11(f) clarifies that Choices eligibles authorized to receive post-employment services include mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID.

Section 811.11(g) adds the phrase "unless otherwise specified in this chapter," to specify that additional criteria for monitoring and tracking work requirements may be specified throughout the chapter.

Section 811.11(i) adds verification of participation hours in Choices as necessary data to be entered into The Workforce Information System of Texas (TWIST).

#### §811.13. Responsibilities of Choices Participants.

Section 811.13(b)(3) clarifies that Choices participants must report "actual" hours of participation as defined in §811.34. In addition, the term "component activities" is replaced with "Choices work activities" to provide consistent terminology throughout the chapter.

Section 811.13(c) and (d) replace the term "employment planning appointments" with the term "employment planning sessions" to provide consistent terminology throughout the chapter.

Section 811.13(e) states that mandatory Choices participants must be coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID as related to their responsibility of reporting hours and receiving post-employment services.

#### §811.14. Noncooperation.

Section 811.14(a)(3) is reorganized as §811.14(b) to specify that for Choices participants who have not cooperated with work requirements and do not have good cause, a Board must ensure that a penalty is requested for mandatory Choices participants or a Board must terminate Choices services, including support services, for exempt Choices participants.

Section 811.14(d) clarifies that attempts to determine good cause for sanctioned families and conditional applicants must be made upon discovery of noncooperation during their demonstrated cooperation period.

Certain subsections in §811.14 have been relettered to accommodate additions or deletions.

#### §811.15. Demonstrated Cooperation.

Section 811.15(a) replaces "one month" with "four consecutive weeks," relating to conditional applicants, to provide consistent terminology throughout the chapter.

#### §811.16. Good Cause for Choices Participants.

Section 811.16(b)(5) replaces the term "Responsibility Agreement" with "family employment plan" to provide consistent terminology throughout the chapter.

Section 811.16(c)(2) adds a new good cause reason for Choices participants who participate only to the extent determined able as supported by medical documentation but less than the required hours specified in this chapter.

Section 811.16(c)(4) replaces the term "household member" with the term "family member." The paragraph also specifies that a disabled family member does not attend school full time and Boards must ensure the need for care is supported by medical documentation.

Section 811.16(c)(5) adds a new good cause reason for those Choices participants who are caring for a disabled family member who attends school full time. The paragraph also stipulates that Boards must ensure the need for care is supported by medical documentation. Two separate good cause reasons are necessary to determine which Choices participants may be excluded from the calculation of federal work participation rates. Only those participants caring for a disabled family member who does not attend school full-time are disregarded in the calculation of federal work participation rates.

Section 811.16(c)(7)(B) and (C) remove the term "formal" to align the description of child care providers with the definition set forth in Chapter 809 of this title.

Section 811.16(c)(7)(D) replaces the term "formal or informal" with "appropriate" to align the good cause description with federal law.

Section 811.16(e)(4) is added to clarify that good cause and short-term excused absences are different types of determinations and must be established separately.

Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

### SUBCHAPTER C. CHOICES SERVICES

The Commission proposes amendments to Subchapter C, as follows:

#### §811.21. General Provisions.

Section 811.21(b)(1) - (3) are removed and relocated in new §811.29(a)(1) - (3) in order to list all provisions required by the Fair Labor Standards Act (FLSA) in one section.

#### §811.22. Assessment.

Section 811.22(b)(5) removes the phrase "or the need for parenting skills training" because HHSC requires Choices eligibles to attend a parenting skills class as part of their eligibility for TANF cash assistance.

Section 811.22(e)(1)(B) specifies that mandatory Choices participants must be coded by HHSC as employed to be excluded from the literacy assessment. Additionally, the requirement to provide literacy information to HHSC is removed because it is contained in §811.22(e)(2).

#### §811.23. Family Employment Plan.

Section 811.23(d)(3)(C) is modified to include substance abuse and mental health treatment as types of referrals for support services, as provided in the interim regulations.

Section 811.23(d)(4) is modified to state that individuals coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID are not required to sign the family employment plan.

Section 811.23(e), which instructs Boards to enroll mandatory individuals in specific job readiness activities, is removed. The job readiness activities referenced in this subsection are no longer allowable work activities as defined in the interim regulations.

Certain subsections in §811.23 have been relettered to accommodate additions or deletions.

#### §811.24. Family Work Requirement Form for Two-Parent Families.

Section 811.24(2)(B) is modified to clarify that mandatory Choices participants must be coded by HHSC as employed 30 hours per week, earning at least \$700 per month, and receiving the EID to be excluded from signing the Family Work Requirement.

#### §811.25. TANF Core and TANF Non-Core Activities.

Section 811.25(a)(1)(A) - (H) are reordered to mirror the order of the activities in the interim regulations.

Section 811.25(a)(2)(C) is removed because parenting skills training is not an allowable federal work activity as specified in the interim regulations.

Section 811.25(d)(1) and (2), the work participation exceptions for two-parent families, are removed because these exclusions are not allowable in the calculation of federal work participation rates. Two-parent families receiving Commission-funded child care must participate in Choices activities an average of fifty-five hours per week regardless of good cause status.

#### §811.26. Special Provisions Regarding Community Service.

Section 811.26(a)(2) is removed and relocated in §811.29(b) in order to list all provisions required by FLSA in one section.

Certain subsections in §811.26 have been relettered to accommodate additions or deletions.

#### §811.27. Special Provisions Regarding Job Search and Job Readiness.

Section 811.27(b) removes the reference to job readiness activities in §811.41(d)(3)(A)(D) relating to activities associated with

the health, safety, and welfare of families because these activities are no longer allowable under the interim regulations.

Section 811.27(d), which requires Boards to ensure Choices participants are continuously enrolled in specific job readiness activities listed in §811.41(d)(3), is removed. These job readiness activities related to the health, safety, and welfare of families are no longer allowable under the interim regulations.

Certain subsections in §811.27 have been relettered to accommodate additions or deletions.

#### §811.29. Special Provisions Regarding the Fair Labor Standards Act.

New §811.29(a) is added in order to list all provisions required by FLSA in one section. These provisions are relocated, with minor modifications, from removed §811.21(b)(1) - (3).

New §811.29(b) is added in order to list all provisions for FLSA-covered activities in one section. These provisions are relocated, with minor modifications, from removed §811.26(a)(2). In addition, new language is added stating that if a Choices participant's hours of community service or other unpaid work activity do not meet the core work activity requirement in §811.25(b) - (d), Boards must:

- (1) enroll the Choices participant in additional core activities; or
- (2) deem the remaining core hours as having met the core work activity requirement.

The Commission adds new §811.29(b)(2) to give Boards the option to deem core participation hours for Choices participants who cannot participate for their full core work activity hours in FLSA-covered activities. For example, a two-parent family with one child receives a maximum TANF benefit of \$250 per month and a maximum Food Stamp benefit of \$399 per month. The total TANF and Food Stamp benefits divided by the minimum wage allows the family to participate only 29 hours per week in FLSA-covered activities.

Two-parent families have a 30-hour per week core activity requirement if they do not receive subsidized child care; the requirement increases to 50 hours per week if they do receive subsidized child care. Under the current calculation of Choices participation, the two-parent family, if not receiving subsidized child care, must participate in an additional hour of core activities and five hours of non-core work activities to be counted as meeting the work participation requirement. If the two-parent family receives subsidized child care, the family must participate an additional 21 hours in core activities and five hours in non-core activities to be counted as meeting the work participation requirement.

Under the new deeming option, this two-parent family will count as meeting its core work participation requirement--with or without receiving subsidized child care--by participating the maximum of 29 hours allowed by FLSA requirements and participating 5 hours in non-core activities.

The deeming provision is allowed by the interim regulations as long as a state operates a mini-Simplified Food Stamp Program (mini-SFSP). Under the mini-SFSP, states must notify the Food and Nutrition Service (FNS) only of their *intent* to combine Food Stamp and TANF benefits when calculating participation hours for FLSA-covered activities. In previous guidance issued by the U.S. Department of Labor, states were given the option of combining Food Stamp and TANF benefits in the calculation of FLSA-covered work activities. Because this option always has been

available in the Choices rules, the Commission submitted a letter to FNS requesting recognition as a state that operates a mini-SFSP in order to employ the deeming provision. FNS recently approved the Commission's request.

#### §811.30. Special Provisions for Teen Heads of Household.

New §811.30 sets out the provisions, with minor modifications, previously located in repealed §811.29.

#### §811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six.

New §811.31 sets out the provisions, with minor modifications, previously located in repealed §811.30.

#### §811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements.

New §811.32(a) and (b)(1) set out the provisions, with minor modifications, previously located in repealed §811.31(a) and (b).

New §811.32(b)(2) provides that Boards should not request a penalty for Choices participants with disabilities who participate to the extent determined able, as supported by medical documentation, but less than the required hours specified in the chapter.

New §811.32(b)(3) provides that Boards should not request a penalty for Choices participants caring for a disabled family member, as supported by medical documentation when the Choices participant participates to the extent able but less than the required hours specified in the chapter.

#### §811.33. Other Special Provisions.

New §811.33 sets out the provisions, without modifications, previously located in repealed §811.32(b) and (c). The provisions previously located in repealed §811.32(a), regarding counting participation hours for mandatory participants with disabilities or mandatory participants caring for a disabled family member, are no longer included in this chapter because this method of calculating work participation hours is not consistent with the federal calculation of work participation hours. Section 811.16 and new §811.32 provide good cause provisions and penalty exceptions for Choices participants with reduced work requirements.

#### §811.34. Participation Provisions.

New §811.34 is added to provide guidance on counting actual participation hours for all work activities, along with the exceptions to this provision, as required by the interim regulations.

New §811.34(1) provides that Boards may count holidays or other paid leave as actual participation hours for paid work activities.

New §811.34(2) provides that Boards may count short-term excused absences as actual participation hours for unpaid work activities.

New §811.34(2)(A) states that the short-term excused absence must be because of a holiday, or total a maximum of 10 additional days within a 12-month period and not exceed two excused absences per month.

New §811.34(2)(B) provides that the Choices participant must have been scheduled to participate in an unpaid work activity during the time period in which the holiday or excused absence falls. In addition, Boards must ensure credited participation

hours do not exceed the number of hours the Choices participant was scheduled to participate.

New §811.34(3) states that Boards may project participation hours in paid work activities based on an average of four weeks of current, documented actual hours.

New §811.34(3)(A) provides that a Board may project participation hours in self-employment for up to six months using an average of three months of current, documented actual hours.

New §811.34(3)(B) states that a Board may not count more hours toward the work participation rate for self-employed Choices participants than the number derived by dividing the Choices participant's net self-employment income (gross self-employment wages minus business expenses) by the federal minimum wage.

### SUBCHAPTER D. CHOICES WORK ACTIVITIES

The Commission proposes amendments to Subchapter D, as follows:

#### §811.41. Job Search and Job Readiness Assistance.

Section 811.41(b)(1)(C) replaces the term "client-directed" with the term "customer-directed"; replaces the word "significant" with the word "direct"; and removes the requirement for customers to engage in activities addressing the health, safety, and welfare of their families. These changes are made to align with the definition of allowable job readiness activities provided in the interim regulations.

Section 811.41(b)(1)(C)(i) and (ii) are added to inform Boards about how to verify and count participation hours in customer-directed job search. Daily contact with Choices participants must be maintained to document the contact, verify participation, and discuss the progress of the participant's job search. Each job contact made by the Choices participant while participating in customer-directed job search counts as two hours of participation. The hours of participation may be increased if it is documented and verified that the job contact took more than two hours because of travel time or other reasonable explanations.

Section 811.41(b)(4) is added to require daily supervision of job search and job readiness activities, as required by the interim regulations.

Section 811.41(b)(5) is added to require daily documentation in TWIST of job search and job readiness activities. This section requires Boards to document daily participation hours, as opposed to weekly hours, in TWIST. For example, documentation for participation in job search may reflect eight hours for Monday, eight hours for Wednesday, and eight hours for Friday, instead of 24 hours of job search for the entire week. This requirement does not apply to the frequency of data entry. Boards retain the flexibility to determine how often data entry occurs, as long as it is within the parameters set forth in §811.21. Automation changes in TWIST will be made to accommodate this new requirement.

Section 811.41(b)(6) is added to include the allowance for counting substance abuse treatment, mental health treatment, or rehabilitation activities as allowable job readiness activities as provided by the interim regulations.

Section 811.41(c) is modified to define job search activities as acts of seeking and obtaining employment, as specified in the interim regulations.

Section 811.41(c)(1), (3), (6), and (7), specifying certain types of job search activities, are deleted. These activities do not meet the new definition of job search but do meet the new defini-



tion of job readiness. Therefore, these activities are moved to §811.41(d).

Section 811.41(c)(5), "applying or interviewing for job vacancies," and §811.41(c)(6), "making contacts with potential employers," are added as allowable activities related to job search, as provided in the interim regulations.

Section 811.41(d)(3) - (9) are added to specify other options for job readiness activities such as substance abuse treatment, rehabilitation activities, and job search activities that meet the new definition of job readiness, as defined in the interim regulations.

Section 811.41(d)(3)(A) - (D), specifying activities essential to the health, safety, and welfare of families as a job readiness activity, are removed. The interim regulations specifically prohibit these types of activities to be counted under any work category.

Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

#### §811.43. Subsidized Employment.

Section 811.43(d) is added to provide that subsidized placements must prepare customers for unsubsidized employment, as required by the interim regulations.

Section 811.43(e) is added to provide that subsidized placements must be made with employers that expect to offer unsubsidized employment to Choices participants after the placement has ended.

#### §811.44. On-the-Job Training.

Section 811.44(d) is added to require Boards to ensure that Choices participants enrolled in on-the-job training are supervised daily, as required by the interim regulations.

Section 811.44(e) is added to require Boards to ensure on-the-job training is documented in TWIST at least every two weeks.

#### §811.45. Work Experience.

Section 811.45(b) removes the requirement that work experience positions are offered only in the private for-profit sector. The interim regulations do not place this restriction on work experience and this change aligns the work experience definition in this chapter with the definition of work experience in the interim regulations.

Section 811.45(d)(3) specifies that supervision for work experience activities must be on a daily basis, as required by the interim regulations.

Section 811.45(f) is added to require that documentation for work experience activities be entered into TWIST at least every two weeks.

#### §811.46. Community Service.

Section 811.46(b) is modified to require that Boards must not allow Choices participants to arrange their own community service placements because the placements must meet more stringent criteria, as required by the interim regulations, to be counted as participation. Additionally, the subsection incorporates the definition of community service programs to align with the definition in the interim regulations. Community service programs are defined in the interim regulations as structured, supervised programs that provide a direct benefit to the community and improve the employability of the Choices participant.

Section 811.46(d) is added to specify examples of allowable placement sites for community service activities.

Section 811.46(e) is added to list examples of allowable fields for community service activities, as provided in the interim regulations.

Section 811.46(f) is added to require that Choices participants in community service programs must be supervised on a daily basis, as required by the interim regulations.

Section 811.46(g) is added to require that community service activities must be documented in TWIST at least every two weeks.

#### §811.47. Child Care Services to Choices Participants in Community Service.

Section 811.47(b) removes the reference that states providing child care is a core activity. This statement is duplicative because it is found in §811.47(a).

Section 811.47(b)(3), which gives Boards the flexibility to set local policies for determining participation hours in child care activities, is removed. The interim regulations emphasize the need for consistency in the calculation of participation hours. Therefore, the Commission has provided additional guidance in §811.47(f) on calculating participation hours for this activity.

Section 811.47(c) is added to require that placement in a child care activity must aid the Choices participant in becoming self-sufficient.

Section 811.47(d) is added to require that Choices participants who provide child care services are supervised on a daily basis, as required by the interim regulations.

Section 811.47(e) is added to require that child care services provided by Choices participants are documented at least every two weeks.

Section 811.47(f) is added to require that Boards must count only actual hours of participation in child care activities as allowable work participation hours.

#### §811.48. Vocational Educational Training.

Section 811.48(b) removes the statement that services provided by the Texas Rehabilitation Commission (now the Department of Assistive and Rehabilitative Services (DARS)) may be counted as vocational education training. The interim regulations provide a more narrow definition of vocational education and what types of institutions may provide the training. Services provided by DARS are no longer allowable as vocational educational training under this definition. However, if DARS contracts out vocational educational training to an education or training organization, Boards have the flexibility to determine whether that activity meets the allowable definition for vocational educational training. In addition, other activities offered through DARS may meet the new definitions of the other allowable Choices activities. Boards are encouraged to coordinate with DARS to provide services for Choices participants with disabilities within the parameters of this chapter.

Section 811.48(c)(1), (2), and (7) are added to incorporate the interim regulation's definition of vocational educational training. These specify that vocational educational training is directly related to a specific occupation, trade, or vocation and list the types of organizations that may provide vocational educational training.

Section 811.48(c)(3) clarifies that vocational educational training must relate to current or emerging occupations, as provided in the interim regulations.

Section 811.48(d), which relates to counting study or homework hours for vocational educational training, is modified to align with the interim regulations. The interim regulations allow only supervised study or homework hours to count as participation. The Commission removes the five hour per week limit on study or homework time. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.48(d)(3) is modified to state that study or homework time must be directly monitored, supervised, and documented.

Section 811.48(d)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.48(e) is added to require that Boards must verify a Choices participant's good or satisfactory progress in vocational educational training, as determined by the educational institution.

Section 811.48(f) is added to require that Choices participants enrolled in vocational educational training are supervised on a daily basis, as required by the interim regulations.

Section 811.48(g) is added to require that vocational educational training is documented in TWIST at least every two weeks.

Certain paragraphs in §811.48 have been renumbered to accommodate additions or deletions.

#### §811.49. Job Skills Training.

Section 811.49(e)(1) removes Adult Basic Education (ABE) as job skills training. The interim regulations state that this type of activity is considered an educational service for Choices participants who have not completed secondary school or received a General Educational Development credential. This reclassification of ABE is reflected in §811.50(b)(2).

Section 811.49(e)(1) also is modified to broaden the specific references to "English as a Second Language (ESL)" as "language instruction" and "Workforce Adult Literacy services" as "literacy instruction." These changes are made to align with terminology contained in the interim regulations. However, ESL and Workforce Adult Literacy services are included under the meaning of the broader terms.

Section 811.49(f), relating to counting study or homework hours for job skills training, is modified by removing the five hour per week limit on study or homework time. The interim regulations allow only supervised study or homework hours to count as participation. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.49(f)(3) is modified to clarify that study or homework time must be directly monitored, supervised, and documented.

Section 811.49(f)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.49(g) is added to require that Boards must verify a Choices participant's good or satisfactory progress in job skills training.

Section 811.49(h) is added to require that Choices participants enrolled in job skills training are supervised on a daily basis, as required by the interim regulations.

Section 811.49(i) is added to require that job skills training is documented in TWIST at least every two weeks.

Certain paragraphs in §811.49 have been renumbered to accommodate additions or deletions.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

Section 811.50(b)(1) clarifies that Choices participants age twenty and older are to be enrolled in educational services only if it is required for the job position.

Section 811.50(b)(2) is modified to add ABE and ESL instruction as allowable educational services. The interim regulations reclassified ABE from job skills training to an allowable educational service.

Section 811.50(b)(2) also is modified to broaden the specific references to "English as a Second Language (ESL)" as "language instruction" and "Workforce Adult Literacy services" as "literacy instruction." These changes are made to align with terminology contained in the interim regulations. However, ESL and Workforce Adult Literacy services are included under the meaning of these broader terms.

Section 811.50(c) is added to clarify that educational services must provide skills and knowledge directly related to specific occupations or work settings.

Section 811.50(d), which relates to counting study or homework hours for educational services, is modified by removing the five hour per week limit on study or homework time. The interim regulations only allow supervised study or homework hours to count as participation. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.50(d)(3) clarifies that study or homework time must be directly monitored, supervised, and documented.

Section 811.50(e)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.50(e) is added to require that Boards must verify a Choices participant's good or satisfactory progress in educational services, as determined by the educational institution.

Section 811.50(f) is added to require that Choices participants enrolled in educational services be supervised on a daily basis, as required by the interim regulations.

Section 811.50(g) is added to require that educational services are documented in TWIST at least every two weeks.

Certain subsections in §811.50 have been relettered to accommodate additions or deletions.

#### §811.51. Post-Employment Services.

Section 811.51(a) clarifies who is eligible for post-employment services and adds conditional applicants to the list of individuals who are offered post-employment services. It is the Commis-

sion's intent to help employed Choices eligibles to retain employment and achieve self-sufficiency.

Section 811.51(e)(2) replaces the reference to "one month of demonstrated cooperation" with the more general term, "demonstrated cooperation period," because sanctioned families and conditional applicants have different time frames in which to demonstrate cooperation.

#### §811.52. Parenting Skills Training.

Section 811.52, which lists parenting skills training as a Choices work activity, is repealed. The interim regulations define work activities as those activities that are work or direct preparation for work. While parenting skills training is important for Choices participants, it is not an allowable work activity defined in the interim regulations. Recipients are required to attend parenting skills training as part of their eligibility for TANF cash assistance. Frequently, HHSC has agreements with the local Women, Infants and Children offices or other community organizations to provide parenting skills training.

### SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission proposes amendments to Subchapter E, as follows:

#### §811.61. Support Services.

Section 811.61(d)(2) replaces the reference to "one month of demonstrated cooperation" with the more general term, "demonstrated cooperation period," because sanctioned families and conditional applicants have different time frames in which to demonstrate cooperation.

### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules. Boards were surveyed regarding their Choices service delivery practices and the Boards' local policies were found to be consistent with, if not more demanding than, requirements in the interim regulations and in the proposed Chapter 811 rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or micro businesses as a result of enforcing or administering the rules.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and support services in a more consistent manner to meet the needs of TANF recipients in order to help them become self-sufficient and independent of public assistance, and to provide employers with a skilled workforce. Additionally, failure to align Choices work activities with the interim regulations may ultimately result in a financial penalty for the Choices program.

### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review. The Commission also conducted a conference call with Board executive directors and Board staff on September 1, 2006, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §§811.1 - 811.3

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

#### §811.1. Purpose and Goal.

(a) (No change.)

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Board may exercise flexibility in providing services to Choices eligibles [individuals] to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

(c) - (d) (No change.)

#### §811.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Applicant--An adult, or teen head of household, in a family who applies for Temporary Assistance for Needy Families

(TANF) ~~temporary~~ cash assistance, who previously did not leave TANF in a sanctioned status.

~~(2) TDHS--The Texas Department of Human Services.]~~

~~(3) Earned Income Deduction (EID)--A standard work-related and income deduction, available through the TDHS for four months; as defined in TDHS Rules, §3.1003 of this title to recipients who are employed at least 30 hours a week and earn at least \$700 a month.]~~

~~(2) [(4)] Choices eligible--An individual eligible to receive Choices services including an [Individual--An] adult[;] or teen head of household[; in a family] who is an applicant, conditional applicant, recipient, former recipient, or sanctioned family as defined in this chapter.~~

~~(3) Choices participant--A Choices eligible participating in or outreached for Choices services, including:~~

~~(A) Exempt Choices participant--An adult or teen head of household who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC Chapter 372, Texas Works), to participate in Choices services, but who may voluntarily participate in Choices services.~~

~~(B) Mandatory Choices participant--An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section, who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC Chapter 372, Texas Works), to participate in Choices services.~~

~~(4) [(5)] Conditional applicant [Applicant]--An adult[;] or teen head of household[; in a family] who left TANF in a sanctioned status, but who is reapplying for TANF [temporary] cash assistance.~~

~~(5) Earned Income Deduction (EID)--A standard work-related and income deduction, available for four months through HHSC.~~

~~(6) Extended TANF recipient--A recipient who receives TANF cash assistance past the 60-month federal time limit because of a hardship exemption as defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC Chapter 372, Texas Works).~~

~~(7) Former recipient--An adult or teen head of household who no longer receives TANF cash assistance because of employment.~~

~~(8) HHSC--Texas Health and Human Services Commission.~~

~~[(6) Mandatory Individual--An adult, or teen head of household, in a family who is a conditional applicant, mandatory recipient, or sanctioned family as defined in this chapter, who is required to participate in Choices services.]~~

~~(9) [(7)] PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.~~

~~(10) [(8)] Recipient--An adult[;] or teen head of household[; in a family] who receives TANF [temporary] cash assistance[; and includes:]~~

~~[(A) Exempt Recipient--A recipient who is not required to participate in Choices services, as defined by TDHS Rules, §3.1101 of this title:]~~

~~[(B) Extended TANF Recipient--A recipient who receives TANF cash assistance past the 60-month time limit because of a hardship exemption as defined in TDHS Rules, §3.6001 of this title:]~~

~~[(C) Former Recipient--An adult, or teen head of household, in a family who no longer receives temporary cash assistance because of employment; or]~~

~~[(D) Mandatory Recipient--An adult, or teen head of household, in a family, including extended TANF recipients who are required as defined by TDHS Rules, §3.1101 and §3.6001 of this title, to participate in Choices services.]~~

~~(11) [(9)] Sanctioned family [Family]--An adult[;] or teen head of household[; in a family] who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.~~

~~(12) [(10)] TANF [Temporary] cash assistance--The cash grant provided through HHSC [TDHS] to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, TANF [temporary] cash assistance provided under Texas Human Resources Code, Chapters 31 and [or] 34, and other related regulations. [The term is also referred to as "TANF cash assistance."]~~

~~[(11) Work Requirement--For the purpose of 45 U.S.C. §607 and 45 CFR §261.10, a Choices individual is deemed to be engaged in work by cooperating with:]~~

~~[(A) all requirements set forth in the family employment plan, as set forth in this chapter; and]~~

~~[(B) all TANF Core and Non-Core activities, as set forth in this chapter.]~~

~~(13) [(12)] Work-based services [Work-Based Services]--Includes those employment programs [services] defined in Texas Human Resources Code §31.0126.~~

~~(14) [(13)] Work ready [Ready]--A Choices eligible [individual] is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices eligible [individual] has those necessary skills to obtain employment.~~

~~(15) Work requirement--For the purposes of 45 U.S.C. §607 and 45 C.F.R. §261.10, a Choices eligible is deemed to be engaged in work by cooperating with:~~

~~(A) all requirements set forth in the family employment plan, as described in this chapter; and~~

~~(B) all TANF core and non-core activities, as set forth in this chapter.~~

~~§811.3. Choices Service Strategy.~~

~~(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:~~

~~(1) - (2) (No change.)~~

~~(3) identify employment opportunities, which include [includes] those with a potential for career advancement that may assist a Choices eligible's [an individual's] progression towards self-sufficiency.~~

~~(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:~~

~~(1) (No change.)~~

~~(2) utilize a work first design as referenced in subsection (c)(2) of this section to provide Choices participants [mandatory individuals; and exempt recipients who voluntarily participate in Choices services;] access to the labor market; and~~

(3) assist former recipients in job retention and career advancement to remain independent of TANF [temporary] cash assistance.

(c) The Choices service strategy shall include:

(1) (No change.)

(2) Work First Design.

(A) The work first design:

(i) allows Choices participants [individuals] to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking Choices participants [individuals] with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants [individuals] access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for TANF [temporary] cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's [an individual's] progress toward [towards] self-sufficiency as described in subsection (b)(3) of this section [paragraph (3) of this subsection and §811.51 of this chapter].

(D) In order to assist a Choices eligible's [an individual's] progress toward self-sufficiency:

(i) Boards shall provide Choices eligibles [individuals] who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and [those] receiving the EID, with information on available post-employment services; or

(ii) Boards may provide Choices eligibles [individuals] with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51 [of this chapter].

(E) (No change.)

(F) Boards [A Board] shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF [temporary] cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants [individuals] with job retention, career advancement, and reemployment, as defined in §811.51 [of this chapter]. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's [an individual's] job retention, wage gains, career progression, and progression to self-sufficiency.

(4) (No change.)

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a General Educational Development (GED) credential [certificate of general equivalency] and making the transition from school to employment, as described in §811.30 [§811.29] and §811.50 [of this chapter].

(6) Choices Eligibles [Individuals] with Disabilities. A Board shall ensure that services for Choices eligibles [individuals] with disabilities include reasonable accommodations to allow the Choices eligibles [individuals] to access and participate in services, where applicable by law. A [a] Board shall ensure that Memoranda of

Understanding (MOUs) [~~MOU~~] are established with the appropriate agencies to serve Choices eligibles [individuals] with disabilities, and that referrals are made, as appropriate, to allow Choices eligibles [people] with disabilities to maximize their potential for success in employment.

(7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11(d) and (e) [~~of this chapter~~], on the needs of the following:

(A) recipients who have six [6] months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) recipients who have 12 [twelve] months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) recipients who are extended [Extended] TANF recipients [Recipients].

(8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

(9) Local-Level MOU. A Board shall ensure the development of a local-level MOU in cooperation with HHSC [TDHS] for coordinated case management that is consistent with the MOU between HHSC [TDHS] and the Commission.

(10) Housing Partnerships. A Board shall establish a collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

TRD-200606097

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0829



## SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

### 40 TAC §§811.11 - 811.16

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.11. Board Responsibilities.

(a) A Board shall ensure that:

(1) procedures are developed, in conjunction with HHSC [TDHS], to notify applicants and conditional applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) ~~[(WOA)]~~ and alternative WOAs;

(2) the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC [TDHS] requirement that gives applicants and conditional applicants 10 ~~[ten]~~ calendar days from the date of their eligibility interview to attend a WOA;

(3) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:

(A) employment services available through the One-Stop Service Delivery Network to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF [temporary] cash assistance;

(B) - (D) (No change.)

(E) other services and activities, including education and training, available through the One-Stop Service Delivery Network, including services and referrals for services available to Choices eligibles [people] with disabilities;[-]

(4) (No change.)

(5) procedures are developed to notify HHSC [TDHS] of applicants and conditional applicants who contacted a Texas Workforce Center [the Board's workforce centers] to request alternative WOAs;

(6) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC [TDHS] is notified in accordance with HHSC rules (1 TAC Chapter 372, Texas Works) [TDHS rule, §3.7301 of this title]; and

(7) (No change.)

(b) A Board shall ensure that:

(1) Choices services are offered to applicants who attend a WOA; and[-]

(2) conditional ~~[(Conditional)]~~ applicants who attend a WOA are immediately scheduled to begin Choices services.

(c) A Board shall ensure that a Choices participant's eligibility [recipient status] is verified monthly.

(d) A Board shall develop policies and procedures to ensure that services are concentrated on Choices eligibles [individuals] approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B) ~~[of this chapter]~~. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's [recipient's] ability to participate, and targeted job development.

(e) A Board shall ensure that all extended [Extended] TANF recipients ~~[Recipients]~~ are outreached and offered the opportunity to participate in Choices activities.

(f) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices eligibles [individuals] including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and ~~[those]~~ receiving EID.

(g) A Board shall ensure that the monitoring of work requirements is ongoing and frequent, as determined by a Board, unless otherwise specified in this chapter, and consists of the following:

(1) (No change.)

(2) tracking and reporting ~~[of]~~ support services;

(3) tracking and reporting actual hours of participation, at least monthly, unless otherwise specified in this chapter;

(4) determining and arranging for any intervention needed to assist the Choices participant [individual] in complying with work requirements;

(5) ensuring that the Choices participant [individual] is progressing toward achieving the goals and objectives in the family employment plan; and

(6) (No change.)

(h) A Board shall ensure that:

(1) no less than four hours of training regarding family violence is provided to staff who:

(A) provide information to Choices eligibles [individuals];

(B) request [recommen]d penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) Choices eligibles [individuals] who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(i) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, [individuals] and data is entered into The Workforce Information System of Texas (TWIST) [TWIST].

(j) A Board shall ensure that a referral program is developed to provide Choices eligibles facing [individuals with] higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

#### *§811.12. Applicant and Conditional Applicant Responsibilities.*

Applicants and conditional applicants are required to attend a scheduled or an alternative WOA, in accordance with HHSC rules (1 TAC Chapter 372, Texas Works) [TDHS rule 40 T.A.C. §§3.7301-3.7302].

#### *§811.13. Responsibilities of Choices Participants [Mandatory Individuals and Exempt Recipients Who Voluntarily Participate].*

(a) A Board shall ensure that Choices participants [mandatory individuals, and exempt recipients who voluntarily participate in Choices services,] comply with the provisions contained in this section.

(b) Choices participants [Mandatory individuals, and exempt recipients who voluntarily participate in Choices services,] shall:

(1) (No change.)

(2) participate in or receive ancillary services necessary to enable Choices participants [mandatory individuals] to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) report actual hours of participation in Choices work [component] activities, including hours of employment; and

(4) (No change.)

(c) Within two-parent families, Choices participants [~~mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~] shall participate in assessment and family employment planning sessions [appointments] and assigned employment and training activities as follows:

- (1) participate in Choices employment and training as specified in §811.25(c) - (d) [~~of this chapter~~];
- (2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34 [~~811.32 of this chapter~~];
- (3) (No change.)
- (4) sign a form that contains all the information identified in the Commission's Family Work Requirement form, as described in §811.24 [~~of this chapter~~].

(d) Within single-parent families, Choices participants [~~mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~] shall participate in assessment and employment planning sessions [appointments] and assigned employment and training activities as follows:

- (1) participate in Choices employment and training activities as specified in §811.25(b) [~~of this chapter~~];
- (2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34 [~~811.32 of this chapter~~]; and
- (3) (No change.)

(e) A Board shall ensure that mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID [~~recipients who elect to receive the EID through TDHS~~]:

- (1) report to the Board actual hours of work, as defined in §811.34 [~~to a Board~~]; and
- (2) (No change.)

#### §811.14. Noncooperation.

(a) A Board shall ensure that cooperation by Choices participants [~~mandatory individuals with work requirements~~] is verified each month to ensure that the Choices participants [~~individuals~~]:

- (1) comply with work requirements as set forth in the family employment plan[, unless the recipient is exempted by TDHS]; or
- (2) have good cause as described in this chapter.[: or]
- [(3) have not cooperated with work requirements and a penalty is requested.]

(b) If Choices participants have not cooperated with work requirements and do not have good cause, a Board shall ensure that:

- (1) a penalty is requested for mandatory Choices participants; or
- (2) Choices services, including support services, are terminated for exempt Choices participants.

(c) [(b)] A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a mandatory Choices participant [recipient] prior to requesting [initiating] a penalty to:

- (1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c) [~~of this subchapter~~];

(2) inform the mandatory Choices participant [~~recipient~~] of:

- (A) the violation, if good cause has not been determined;
- (B) the right to appeal; and
- (C) the necessary procedures to demonstrate cooperation.

(d) [(e)] A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.

(e) [(d)] A Board shall ensure that the reasonable attempts to contact a mandatory Choices participant [individual] are documented.

(f) [(e)] A Board shall ensure that [TDHS is notified of]:

(1) HHSC is notified of a mandatory Choices participant's [recipient's] failure to comply with work requirements; and

(2) [that] the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

#### §811.15. Demonstrated Cooperation.

(a) Conditional applicants are required to demonstrate four consecutive weeks [one month] of cooperation to become eligible for reinstatement of TANF cash assistance.

(b) (No change.)

(c) A Board shall ensure that HHSC [~~TDHS~~] is immediately notified if:

- (1) - (3) (No change.)

#### §811.16. Good Cause for Choices Participants [~~Mandatory Individuals and Exempt Recipients Who Voluntarily Participate~~].

(a) Good cause applies [~~only~~] to Choices participants [~~mandatory individuals, and exempt recipients who voluntarily participate in Choices services~~]. A Board shall ensure that good cause is determined as provided in this chapter.

(b) A Board shall ensure that a good cause determination:

- (1) - (2) (No change.)

(3) covers a temporary period when Choices participants [~~mandatory individuals, or exempt recipients who voluntarily participate in Choices services~~] may be unable to attend scheduled appointments or participate in ongoing work activities;

(4) (No change.)

(5) is conditional upon efforts to address circumstances that limit the ability to participate in Choices services as required in the family employment plan [~~Responsibility Agreement~~].

(c) The following reasons may constitute good cause for purposes of this chapter:

(1) Temporary [~~temporary~~] illness or incapacitation;

(2) Choices participants with disabilities or caring for a disabled family member who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours, as set forth in §811.25(b) - (d) and §811.31(b);

(3) [(2)] Court [~~court~~] appearance;

(4) [(3)] Caring [earring] for a [physically or mentally] disabled family [household] member who does not attend school full time and requires the Choices participant's [recipient's] presence in the home. Boards shall ensure the need for such care is supported by medical documentation;

(5) Caring for a disabled family member who attends school full time and requires the Choices participant's presence in the home. Boards shall ensure the need for such care is supported by medical documentation;

(6) [(4)] A [a] demonstration that there is:

(A) no available transportation and the distance prohibits walking; or

(B) no available job within reasonable commuting distance, as defined by the Board;

(7) [(5)] An [an] inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) Informal [informal] child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47 [of this chapter]. Informal child care may also be determined unsuitable by the parent;

(B) Eligible [eligible formal] child care providers are unavailable, as defined in Chapter 809 of this title;

(C) Affordable [affordable formal] child care arrangements within maximum rates established by the Board are unavailable; and

(D) Appropriate [formal or informal] child care within a reasonable distance from home or the work site is unavailable;

(8) [(6)] An [an] absence of other support services necessary for participation;

(9) [(7)] Receipt [receipt] of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(10) [(8)] An [an] individual or family crisis or a family circumstance that may preclude participation, including substance abuse, mental health, and disability-related issues, provided the Choices participant [mandatory individual; or exempt recipient who voluntarily participates in Choices services;] engages in problem resolution through appropriate referrals for counseling and support services; or

(11) [(9)] A Choices participant [an individual] is a victim of family violence.

(d) A Board shall promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that mandatory Choices participants [individuals] in single-parent families caring for children under age six are informed of:

(1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a mandatory Choices participant [individual] has demonstrated an inability to obtain needed child care, as defined in subsection (c)(7)(A) - (D) [(e)(5)(A) - (D)] of this section.

(2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 C.F.R. [CFR] §261.56.

(e) A Board shall ensure that good cause:

(1) (No change.)

(2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; [and]

(3) that is based on the existence of family violence does not exceed a total of twelve consecutive months per occurrence; and[-]

(4) is determined separately from granting Choices participants short-term excused absences from participation, as defined in §811.34(2).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0829



## SUBCHAPTER C. CHOICES SERVICES

### 40 TAC §§811.21 - 811.34

The amendments and new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed amendments and new sections affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

#### §811.21. General Provisions.

(a) A Board shall ensure that services are available to assist Choices eligibles [individuals] with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:

(1) - (5) (No change.)

(b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as specified in §811.29. [follows:]

[(1) the amount of time per week that a recipient may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the recipient would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; or]

[(2) the amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the food stamp benefits amount being divided by the minimum wage so that the amount paid to the sanctioned individual



would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and]

{(3) if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required;]

{(A) the training is similar to that given in a vocational school;]

{(B) the training is for the benefit of the trainees;]

{(C) trainees do not displace regular employees;]

{(D) employers derive no immediate advantage from trainees' activities;]

{(E) trainees are not entitled to a job after training is completed; and]

{(F) employers and trainees understand that trainee is not paid.}]

(c) (No change.)

(d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in [40 T.A.C.] Chapter 841 of this title to provide for Choices services for Choices participants [individuals participating in Choices services] and paid for with TANF funds.

(e) A Board shall, through local policies and procedures, make available job development services, which include:

(1) - (2) (No change.)

(3) assisting the employer in creating new positions for Choices participants [job seekers] based on the job developer's and employer's analysis of the employer's business needs; or

(4) finding opportunities with an employer for a specific Choices participant [job seeker] or a group of Choices participants [job seekers].

(f) A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory Choices participants [individuals].

(g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:

(1) (No change.)

(2) identifying Choices participants [job seekers] who have sufficient skills and abilities to be successfully linked with employment; and

(3) matching the skills of the Choices participant [job seeker] pool to the hiring needs of local employers.

#### *§811.22. Assessment.*

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs, including wage advancement and career development needs, of Choices participants [individuals] as follows:

(1) An assessment is required for Choices participants [mandatory individuals, and for exempt recipients who voluntarily participate in Choices services, and] who are:

(A) (No change.)

(B) heads of household, as determined by HHSC [TDHS], who are not yet age 18, have not completed secondary school or received a GED credential [certificate of general equivalence], and are not attending secondary school.

(2) - (3) (No change.)

(b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:

(1) - (4) (No change.)

(5) individual and family circumstances that may affect participation, including the existence of family violence, substance abuse, mental health, or disability-related issues, [or the need for parenting skills training,] as one of the factors considered in evaluating employability.

(c) A Board shall ensure that the assessment identifies Choices eligibles [individuals] with higher than average barriers to employment, as defined by the Board.

(d) A Board shall ensure that if the skills assessment indicates that a Choices participant [an individual] requires job-specific training for placement in a job paying wages that equal or exceed the Board's identified self-sufficiency wage, the Board shall, to the extent funds are available and to the extent allowed under this chapter, place the Choices participant [individual] in vocational educational training activities or job skills training activities that are designed to improve employment and wage outcomes and job retention; and

(e) For mandatory Choices participants [individuals] who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a GED credential [certificate of general equivalence] and are not attending secondary school:

(1) The assessments shall also include evaluations of the mandatory Choices participants [individual's]:

(A) (No change.)

(B) literacy level by using a statewide standard literacy assessment instrument unless the Choices participants are mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and [with the following exception: recipients receiving the EID are excluded from the literacy assessment: A Board shall ensure that the grade-level results or other literacy information is provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.].

(2) A Board shall ensure that the [The] grade-level results or other literacy information are provided to HHSC [TDHS] for use in determining the appropriateness of the initial state time-limit designation for TANF [temporary] cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(f) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 [of this subchapter].

#### *§811.23. Family Employment Plan.*

(a) Boards must ensure that prior to the development of a family employment plan Choices participants [mandatory individuals, and exempt recipients who voluntarily participate,] receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if

the Choices participants [~~recipient~~] did not receive this information during the WOA.

(b) Family employment plans are required for all Choices participants [~~mandatory individuals; and exempt recipients who voluntarily participate in Choices services~~].

(c) (No change.)

(d) A Board shall ensure that a family employment plan is developed during the assessment and:

(1) is based on assessments, as described in §811.22 [~~of this subchapter~~];

(2) (No change.)

(3) contains the steps and services to achieve the goal, including:

(A) connecting the Choices participant [~~job seeker~~] immediately to the local labor market;

(B) addressing potential barriers that limit the Choices participant's [~~job seeker's~~] ability to work or participate in activities;

(C) arranging support services for the Choices participant [~~job seeker~~] or the family to address circumstances that limit the Choices participant's [~~individual's~~] ability to work or participate, including services for substance abuse, mental health, family violence, and disability-related issues;

(D) (No change.)

(E) requiring Choices participants [~~mandatory individuals~~] to notify the Board's service provider of changes in family circumstances that may preclude participation in Choices services;[.]

(4) is signed by the Choices participant [~~individual~~] unless the Choices participant [~~individual~~] is a mandatory Choices participant coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and [~~recipient~~] receiving the EID--[.] and a Board's service provider; [~~and~~]

(5) assigns required hours and sets forth the participation agreement for compliance with work requirements. Family employment plans for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household; and[.]

(6) provides information about the penalty process, good cause process, right of appeal, and the importance of immediately contacting a case manager [~~worker~~] should individual or family circumstances arise that prevent participation.

~~[(e) A Board shall ensure that mandatory individuals are notified of their responsibility to participate in job readiness activities as set forth in §811.41(d) of this chapter.]~~

(e) ~~[(f)]~~ A Board shall ensure that progress towards meeting the goals of the family employment plan is evaluated and the family employment plan is modified as appropriate to meet employer needs in the local labor market.

#### §811.24. Family Work Requirement Form for Two-Parent Families.

A Board shall ensure that a Family Work Requirement form is developed for all two-parent families that:

(1) (No change.)

(2) is signed by the adults in the household that are required to participate in Choices services, unless the Choices participants [~~except for the following~~]:

(A) are mandatory Choices participants [~~individuals~~] who are temporarily unable to sign the form, such as a Choices participant [~~recipient~~] who is temporarily unavailable; or

(B) are mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and [~~recipients~~] receiving the EID whose only participation requirement is to report their hours of employment.

#### §811.25. TANF Core and TANF Non-Core Activities.

(a) Participation hours are subject to the restrictions regarding TANF core and TANF non-core activities as set forth in 42 [45] U.S.C. §607, 45 C.F.R. §§261.10, 261.12, 261.31, 261.32, and 261.33, [~~and~~] as set forth in this section, and as set forth in §§811.26, 811.27, and 811.28 [~~of this subchapter~~].

(1) TANF core activities are:

~~[(A) job search and job readiness assistance; as described in §811.41 of this chapter;]~~

(A) ~~[(B)]~~ unsubsidized employment, as described in §811.42 [~~of this chapter~~];

(B) ~~[(C)]~~ subsidized employment, as described in §811.43 [~~of this chapter~~];

(C) work experience, as described in §811.45;

(D) on-the-job training, as described in §811.44 [~~of this chapter~~];

(E) job search and job readiness assistance, as described in §811.41;

~~[(E) work experience, as described in §811.45 of this chapter;]~~

(F) community service, as described in §811.46 [~~of this chapter~~];

(G) vocational educational training, as described in §811.48 [~~of this chapter~~]; or

(H) child care services to a Choices participant [~~mandatory individual; or exempt recipient who voluntarily participates in Choices services; who is participating~~] in community service, as described in §811.47 [~~of this chapter~~].

(2) TANF non-core activities are:

(A) job skills training, as described in §811.49 [~~of this chapter~~]; or

(B) educational services for Choices participants [~~mandatory individuals; and exempt recipients who voluntarily participate in Choices services;~~] who have not completed secondary school or received a GED credential [~~certificate of general equivalency~~], as described in §811.50 [~~of this chapter~~].

~~[(C) parenting skills training, as described in §811.52 of this chapter.]~~

(b) Choices participants [~~Mandatory individuals; and exempt recipients who voluntarily participate in Choices services;~~] in a single-parent family are required to participate for at least a minimum weekly average of 30 [~~thirty~~] hours. An average of 20 [~~twenty~~] hours per week must be derived from participation in core activities. Up to an average of 10 [~~ten~~] hours per week may be derived from participation in non-core activities.

(c) Choices participants [~~Mandatory individuals; and exempt recipients who voluntarily participate in Choices services;~~] in two-parent families who are not receiving Commission-funded child care[.] are

required to have one or both adults in the family participate for at least a minimum weekly average of 35 [thirty-five] hours. An average of 30 [thirty] hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.

(d) Choices participants [~~Mandatory individuals, and exempt recipients who voluntarily participate in Choices services;~~] in two-parent families who are receiving Commission-funded child care, are required to have one or both adults in the family participate for at least a minimum weekly average of 55 [fifty-five] hours. An average of 50 [fifty] hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities. [~~The following work participation exceptions apply to two-parent families who are receiving Commission-funded child care:~~]

[(1) two-parent families with one adult in good cause status are deemed to be engaged in work during the month if the adult who is not in good cause status participates for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities; or]

[(2) two-parent families with both adults in good cause status for whom no penalty will be requested for failure to meet the minimum weekly average hours based on the good cause determination;]

#### *§811.26. Special Provisions Regarding Community Service.*

(a) Choices participants [~~Mandatory recipients~~], with the exception of those described in §811.30 and §811.33 [~~§811.29 and §811.32 of this subchapter~~], who are not in an employment activity [after four weeks of participation in Choices services], must be placed into community service after four weeks of participation in Choices services. Choices participants [~~Mandatory recipients~~] who are not in an employment activity after reaching their six-week limit per federal fiscal year in job search and job readiness activities must be placed into community service. An employment activity is defined as:

- (1) unsubsidized employment, as described in §811.42;
- (2) subsidized employment, as described in §811.43;
- (3) on-the-job training, as described in §811.44; or
- (4) work experience, as described in §811.45.

(b) Choices participants [~~Mandatory recipients~~] required to participate in a community service activity must be scheduled to participate no less than the minimum weekly average hours calculated as specified in §811.21(b) [~~of this subchapter~~].

[(1) An employment activity is defined as:]

[(A) unsubsidized employment, as described in §811.42 of this chapter;]

[(B) subsidized employment, as described in §811.43 of this chapter;]

[(C) on-the-job training, as described in §811.44 of this chapter; or]

[(D) work experience, as described in §811.45 of this chapter;]

[(2) The number of hours that a recipient is required to participate in community service or another unpaid work activity, must be determined in compliance with the FLSA as described in §811.21(b) of this subchapter. If a recipient's hours of community service or other unpaid work activity are not sufficient to meet the core work activities

requirement as set forth in §811.25(b) - (d) of this subchapter, the recipient must be enrolled in additional core activities;]

(c) [(b)] Exempt recipients who voluntarily participate in Choices services are not subject to the requirements set forth in subsection (a) of this section.

#### *§811.27. Special Provisions Regarding Job Search and Job Readiness.*

(a) Choices participants [~~Recipients participating~~] in unsubsidized employment as defined in §811.42, [~~§811.26(a)(1)(A) of this subchapter~~] who lose that employment, may participate in job search activities as defined in §811.41(c) [~~of this chapter~~] and job readiness activities as defined in §811.41 [~~§811.41(d)(1) - (2) of this chapter~~] unless they have reached the six-week limit per federal fiscal year.

(b) Job search and job readiness activities as defined in §811.41 [~~of this chapter, with the exception of the job readiness activities set forth in §811.41(d)(3)(A) - (D) of this chapter;~~] are limited as follows:

(1) Choices participants mandatory recipients, and exempt recipients who voluntarily participate in Choices services may not be enrolled for more than four [4] weeks of consecutive activity;

(2) Choices participants [~~mandatory recipients, and exempt recipients who voluntarily participate in Choices services;~~] may not be enrolled for more than six [6] weeks of total activity in a federal fiscal year;

(3) in order for Choices participants [a mandatory recipient] to qualify for their remaining two [2] weeks of job search and job readiness, they must first comply with §811.26(a) [~~of this subchapter~~], which requires that Choices participants the mandatory recipient be engaged in an employment activity or in community service; and

(c) only once per federal fiscal year[;] may a partial week count as a full week of participation, per Choices participant [recipient].

[(d) A Board shall ensure that mandatory individuals:]

[(1) are continuously enrolled in the job readiness activities set forth in §811.41(d)(3) of this chapter; and]

[(2) receive a three-hour participation credit per week for such activities;]

#### *§811.28. Special Provisions Regarding Vocational Educational Training and Educational Services.*

(a) Choices participants [~~Mandatory individuals, and exempt recipients who voluntarily participate in Choices services~~] may not be enrolled in vocational educational [education] training, as defined in §811.48 [~~of this chapter~~], for more than a cumulative total of 12 months.

(b) No more than 30% [thirty percent] of Choices participants [~~mandatory individuals, and exempt recipients who voluntarily participate in Choices services;~~] engaged in work activities in a month may be included in the Board's numerator because they are:

(1) (No change.)

(2) teen heads of household participating in educational activities as described in §811.30 [~~§811.29 of this subchapter~~].

(c) Choices participants [~~Mandatory individuals, and exempt recipients who voluntarily participate in Choices services;~~] shall [only] be enrolled only in core and non-core activities.

#### *§811.29. Special Provisions Regarding the Fair Labor Standards Act.*

(a) A Board shall ensure that employment and training activities are conducted in compliance with FLSA as follows.

(1) The amount of time per week that a Choices participant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the TANF cash assistance and Food Stamp benefits amount being divided by the minimum wage, so that the amount paid to the Choices participant is equal to or more than the amount required for payment of wages, including minimum wage and overtime; or

(2) The amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the Food Stamp benefits amount being divided by the minimum wage, so that the amount paid to the sanctioned family is equal to or more than the amount required for payment of wages, including minimum wage and overtime; and

(3) If a Board provides activities that meet all of the following categories, the activity is considered training under FLSA and minimum wage and overtime are not required:

(A) The training is similar to that given in a vocational school;

(B) The training is for the benefit of the trainees;

(C) The trainees do not displace regular employees;

(D) The employers derive no immediate advantage from trainees' activities;

(E) The trainees are not entitled to a job after training is completed; and

(F) The employers and trainees understand that trainees are not paid.

(b) The number of hours that a Choices participant is required to participate in community service or another unpaid work activity shall be determined in compliance with FLSA as described in subsection (a) of this section. If a Choices participant's hours of community service or other unpaid work activity are not sufficient to meet the core work activity requirement as set forth in §811.25(b) - (d):

(1) the Choices participant shall be enrolled in additional core activities; or

(2) Boards shall deem the remaining core hours as having met the core work activity requirement.

#### §811.30. Special Provisions for Teen Heads of Household.

(a) A Board shall ensure that teen heads of household who have not completed secondary school or received a GED credential are enrolled in educational activities as defined in §811.50.

(b) Teen heads of household who have not completed secondary school or received a GED credential count as engaged in work if they:

(1) maintain satisfactory attendance at a secondary school or the equivalent during months in which school is in session;

(2) participate in allowable activities, as described in §811.25, during months in which school is not in session;

(3) participate in education directly related to employment for at least an average of 20 hours per week during the month; or

(4) participate in Choices employment and training activities as specified in §811.25.

#### §811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six.

(a) A Board shall ensure that Choices participants in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.16(d).

(b) A Choices participant in a single-parent family with children under age six shall count as engaged in work if he or she participates in core activities for at least an average of 20 hours per week.

#### §811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements.

(a) A Board shall not provide Choices services or support services as set forth in §§811.25 - 811.33 to exempt Choices participants who fail to meet work requirements.

(b) A Board shall ensure that a penalty is not requested for:

(1) exempt Choices participants;

(2) Choices participants with disabilities who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours, as specified in §811.25(b) - (d) and §811.31(b); or

(3) Choices participants who are caring for a disabled family member, as supported by medical documentation, when the Choices participant participates to the extent determined able, but less than the required participation hours, as specified in §811.25(b) - (d) and §811.31(b).

#### §811.33. Other Special Provisions.

(a) Conditional Applicants. A Board shall ensure that conditional applicants enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B).

(b) Sanctioned Families. A Board shall ensure that sanctioned families enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B).

#### §811.34. Participation Provisions.

A Board shall count only actual hours of participation in TANF core and non-core activities as allowable work participation hours with the following exceptions, unless otherwise specified in this chapter:

(1) For paid work activities set forth in §§811.42 - 811.44, Boards may count paid holidays or other paid leave as actual participation hours.

(2) For unpaid work activities set forth in §811.41 and §§811.45 - 811.50, Boards may count short-term excused absences as actual participation if they meet the following conditions:

(A) A short-term excused absence:

(i) is because of a holiday; or

(ii) totals a maximum of 10 additional days within a 12-month period and does not exceed two excused absences per month.

(B) The Choices participant must have been scheduled to participate in an unpaid work activity during the time period in which the holiday or excused absence falls. Boards shall ensure credited participation hours do not exceed the number of hours the Choices participant was scheduled to participate.

(3) A Board may project participation hours in unsubsidized employment (except self-employment), subsidized employment, and on-the-job training, up to six months at a time, using an average of four weeks of current, documented actual hours. For self-employment, a Board:

(A) may project participation hours in self-employment, up to six months at a time, using an average of three months of current, documented actual hours.

(B) may not count more hours toward the work participation rate for self-employed Choices participants than the number derived by dividing the Choices participant's net self-employment income (gross self-employment wages minus business expenses) by the federal minimum wage.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0829



#### 40 TAC §§811.29 - 811.32

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed repeals affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.29. *Special Provisions for Teen Heads of Household.*

§811.30. *Special Provisions for Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate in Choices Services, in Single-Parent Families with Children Under Age Six.*

§811.31. *Special Provisions Regarding Exempt Recipients Who Voluntarily Participate.*

§811.32. *Other Special Provisions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

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#### SUBCHAPTER D. CHOICES WORK ACTIVITIES

#### 40 TAC §§811.41 - 811.51

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.41. *Job Search and Job Readiness Assistance.*

(a) Job search and job readiness are core activities as defined in §811.25(a)(1) [~~of this chapter~~].

(b) A Board shall ensure that job search and job readiness activities [~~services~~]:

(1) incorporate the following:

(A) (No change.)

(B) staff-assisted services in which Texas Workforce Center staff provide direction and guidance to Choices participants [~~job seekers~~], including appropriate referrals based on their skills and abilities to pre-scheduled job interviews; and preparatory activities that are essential to obtaining and retaining employment; and

(C) customer-directed [~~client-directed~~] activities that do not require direct [~~significant~~] staff involvement, and include activities in which Choices participants [~~clients~~] independently identify employment opportunities based upon their employment strengths, perform preparatory activities that are essential to obtaining and retaining employment[, and activities that address the health, safety, and welfare of their families].

(i) A Board shall ensure that daily contact with the Choices participant is maintained to document contact, verify participation, and to discuss the progress of the job search.

(ii) A Board shall count two hours of participation for each job contact made while participating in customer-directed job search, unless it is documented and verified that the job contact required more than two hours of participation due to travel time or another reasonable explanation. A Board shall ensure that all exceptions for customer-directed job search are documented daily in TWIST.

(2) are limited to activities necessary for Choices participants [~~individuals~~] to secure immediate employment.

(3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices participants [~~individuals~~] for seeking employment.

(4) are supervised daily.

(5) are documented daily in TWIST.

(6) are allowable treatment or therapy activities that include substance abuse treatment, mental health treatment, or rehabilitation activities determined to be necessary to assist Choices participants with seeking, obtaining, or retaining employment. Boards shall ensure treatment and therapy activities are certified by a qualified medical or mental health professional.

(c) Job search activities are defined as acts of seeking and obtaining employment, including [~~include~~]:

{(1) job skills assessment;}

(1) [(2)] job referrals [~~placement~~];

{(3) counseling;}

(2) [(4)] information on available jobs;

(3) ~~[(5)]~~ occupational exploration, including information on local emerging and demand occupations;

~~[(6) interviewing skills and practice interviews;]~~

~~[(7) assistance with applications and resumes;]~~

(4) ~~[(8)]~~ job fairs;

(5) applying or interviewing for job vacancies; and

(6) making contacts with potential employers.

(d) Job readiness activities are designed to assist Choices participants ~~[individuals]~~ with addressing issues that will aid them in seeking, obtaining, and retaining employment, including:

(1) (No change.)

(2) guidance and motivation for development of positive work behaviors necessary for the labor market; ~~[or]~~

(3) job skills assessment;

(4) substance abuse treatment;

(5) mental health treatment;

(6) rehabilitation activities;

(7) job counseling;

(8) interviewing skills and practice interviews; and

(9) assistance with applications and resumes.

~~[(3) activities essential to the health, safety, and welfare of their families, as follows:]~~

~~[(A) activities associated with maintenance of their children's health and dental checkups, as required by §3.301 of this title;]~~

~~[(B) activities associated with maintenance of their children's immunizations, as required by §3.301 of this title;]~~

~~[(C) activities necessary to ensure their children's school attendance, as required by §3.301 of this title; and]~~

~~[(D) activities necessary to abstain from the use, possession, or sale of controlled substances, and to abstain from alcohol abuse, including participation in counseling.]~~

(e) Job search and job readiness activities are time-limited as defined in §811.27 ~~[of this chapter]~~.

#### §811.42. *Unsubsidized Employment.*

(a) Unsubsidized employment is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) Unsubsidized employment includes the following:

(1) full-time ~~[full]~~ or part-time employment, in which wages are paid in full by the employer;

(2) - (3) (No change.)

#### §811.43. *Subsidized Employment.*

(a) Subsidized employment is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) Subsidized employment is full-time ~~[full]~~ or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices participants ~~[individuals]~~ enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:

(1) subsidized internship with a portion of the Choices participant's ~~[individual's]~~ wages subsidized;

(2) - (3) (No change.)

(c) (No change.)

(d) Boards shall ensure subsidized employment placements prepare and move Choices participants into unsubsidized employment.

(e) Boards shall ensure subsidized employment placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended.

#### §811.44. *On-the-Job Training.*

(a) On-the-job training is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices participant ~~[individual]~~ for subsidized, time-limited training activities, to assist the Choices participant ~~[individual]~~ with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a Choices participant ~~[individual]~~ while engaged in productive work in a job that:

(1) (No change.)

(2) provides reimbursement to the employer of a percent of the wage rate of the Choices participant ~~[individual]~~ for the extraordinary costs of providing the training and additional supervision related to the training;

(3) is limited in duration as appropriate to the occupation for which the Choices participant ~~[individual]~~ is being trained, taking into account the content of the training, the prior work experience of the Choices participant ~~[individual]~~, and the service strategy of the Choices participant ~~[individual]~~, as appropriate; and

(4) (No change.)

(c) Unsubsidized employment after satisfactory completion of the training is expected. A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices participants ~~[individuals]~~ in on-the-job training with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

(d) A Board shall ensure Choices participants enrolled in on-the-job training are supervised daily.

(e) A Board shall ensure on-the-job training is documented in TWIST at least every two weeks.

#### §811.45. *Work Experience.*

(a) Work experience is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices participants ~~[mandatory individuals, and exempt recipients who voluntarily participate in Choices services,]~~ for unsalaried, work-based training positions ~~[in the private for-profit sector]~~ to improve the employability of Choices participants ~~[a mandatory individual]~~ who have ~~[has]~~ been unable to find unsubsidized employment.

(c) A Board shall ensure that all Choices participants ~~[mandatory individuals, and exempt recipients who voluntarily participate in Choices services,]~~ who are unemployed after completing job search

services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.

(d) A Board shall ensure that each work experience placement:

(1) (No change.)

(2) is designed to move Choices participants ~~[the mandatory individuals, and exempt recipients who voluntarily participate in Choices services;]~~ quickly into regular employment; and

(3) has designated hours, tasks, skills attainment objectives, and daily ~~[staff]~~ supervision.

(e) A Board shall ensure that entities that enter into nonfinancial ~~[non-financial]~~ agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable Choices participants ~~[mandatory individuals, and exempt recipients who voluntarily participate in Choices services;]~~ to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

(f) A Board shall ensure work experience activities are documented in TWIST at least every two weeks.

#### *§811.46. Community Service.*

(a) Community service is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants ~~[mandatory individuals, and exempt recipients who voluntarily participate in Choices services;]~~ to a community service program that provides employment or training activities to Choices participants ~~[recipients]~~ through unsalaried, work-based positions in the public or private nonprofit sectors. A Board shall not allow Choices participants to arrange their own community service placements. A Board shall ensure community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices ~~[recipients]~~ who have been unable to find employment.

(c) A Board shall ensure that all mandatory Choices participants ~~[recipients]~~ subject to §811.26(a) ~~[of this chapter]~~ are referred to a community service program.

(d) Community service positions may include, but are not limited to, work performed in:

(1) a school or Head Start program;

(2) a church;

(3) a government or nonprofit agency; or

(4) Americorps, VISTA, or other volunteer organizations.

(e) A Board shall ensure community service placements are limited to positions that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(f) A Board shall ensure Choices participants in community service programs are supervised daily.

(g) A Board shall ensure community service activities are documented in TWIST at least every two weeks.

#### *§811.47. Child Care Services to Choices Participants [a Mandatory Individual, or Exempt Recipient Who Voluntarily Participates in Choices Services, Participating] in Community Service.*

(a) Child care services to Choices participants ~~[a mandatory individual, or exempt recipient who voluntarily participates in Choices services, participating]~~ in community service are ~~[is]~~ a core activity as defined in §811.25 ~~[of this chapter]~~.

(b) A Choices participant ~~[mandatory individual, or exempt recipient who voluntarily participates in Choices services;]~~ may provide child care services for another recipient who is engaged in a community service activity, as described in §811.46 ~~[of this subchapter]~~. ~~[The hours spent by the recipient providing child care are considered a core activity.]~~ Boards that elect to allow this activity must set local policies that ~~[which]~~ include:

(1) ensuring the health, safety, and well-being of the children in care;and

(2) limiting ~~[limits on]~~ the maximum number of children that may be cared for; ; ~~and~~

~~[(3) the methodology and mechanism for reporting hours of participation by recipients.]~~

(c) A Board shall ensure an assignment to provide child care services is effective in moving the provider toward self-sufficiency.

(d) A Board shall ensure Choices participants providing child care services are supervised daily.

(e) A Board shall ensure child care services provided by Choices participants are documented at least every two weeks.

(f) A Board shall count only actual hours of participation in child care activities as allowable work participation hours. Actual hours cannot exceed the number of hours in which Choices participants for whom they are providing child care participate in community service activities plus two additional hours per day for the time the children are in the participant's care while the parent is traveling to and from the child care location. Any exceptions to the two-hour travel time must be documented in TWIST.

#### *§811.48. Vocational Educational Training.*

(a) Vocational educational training is a core activity as defined in §811.25(a)(1) ~~[of this chapter]~~.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants ~~[individuals]~~ for vocational educational training. ~~[Services provided by the Texas Rehabilitation Commission may be counted as vocational education training if the service provided to the Choices individual leads to employment.]~~

(c) The vocational educational training shall:

(1) prepare Choices participants for a specific trade, occupation, or vocation that requires training other than a baccalaureate or advanced degree;

(2) include activities that provide Choices participants with the knowledge and skills to perform a specific trade, occupation, or vocation;

(3) ~~[(4)]~~ relate to current or emerging occupations ~~[the types of jobs available in the labor market];~~

(4) ~~[(2)]~~ be consistent with employment goals identified in the family employment plan, when possible;

(5) ~~[(3)]~~ be provided only if there is an expectation that employment will be secured upon completion of the training; and

(6) ~~[(4)]~~ be subject to the time limitations as detailed in this subchapter; and ~~[-]~~

(7) be provided by education or training organizations, including but not limited to, vocational or technical schools, community colleges, postsecondary institutions, career schools and colleges, non-profit organizations, and secondary schools offering vocational education.

(d) Boards may count supervised [up to 5 hours per week of] study or homework time toward a Choices participant's [mandatory individual; and exempt recipient who voluntarily participates in Choices services;] family participation requirement if:

(1) (No change.)

(2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class; and

(3) study or homework time is [has been] directly monitored, supervised, and documented. [verified from the educational institution; and]

[(4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services, is making progress as determined by the educational institution;]

(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.

(f) A Board shall ensure Choices participants enrolled in vocational educational training are supervised daily.

(g) A Board shall ensure vocational educational training is documented in TWIST at least every two weeks.

#### §811.49. Job Skills Training.

(a) Job skills training is a non-core activity as defined in §811.25(a)(2) [of this chapter].

(b) Job skills training services are designed to increase a Choices participant's [individual's] employability. Job skills training may also include activities ensuring that Choices participants [individuals] become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.

(c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices participants [individuals] for job skills training as set forth in the family employment plan.

(d) (No change.)

(e) Job skills training includes:

(1) language instruction [Adult Basic Education (ABE), English-as-a-Second-Language (ESL);] or literacy instruction [Workforce Adult Literacy services];

(2) (No change.)

(3) self-employment assistance:

(A) for [to] Choices participants [individuals] currently engaged in operating a small business;

(B) for [to] Choices participants [individuals] based upon an objective assessment process that identifies Choices participants [individuals] are likely to succeed; and

(C) that [which] may include microenterprise services such as:

(i) - (iii) (No change.)

(f) Boards may count supervised [up to 5 hours per week of] study or homework time toward a Choices participant's [mandatory individual; and exempt recipient who voluntarily participates in Choices services;] family participation requirement if:

(1) (No change.)

(2) the educational institution's policy requires a certain number of out-of-class preparation hours [for the class]; and

(3) study or homework time is [has been] directly monitored, supervised, and documented. [verified from the educational institution; and]

[(4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services, is making progress as determined by the educational institution;]

(g) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the job skills training provider.

(h) A Board shall ensure Choices participants enrolled in job skills training are supervised daily.

(i) A Board shall ensure job skills training is documented in TWIST at least every two weeks.

§811.50. Educational Services for Choices Participants [Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate in Choices Services;] Who Have Not Completed Secondary School or Received a General Educational Development Credential [Certificate of General Equivalence].

(a) Educational services are only available for Choices participants [mandatory individuals and exempt recipients who voluntarily participate in Choices services;] who have not completed secondary school or who have not received a GED credential [certificate of general equivalence] as follows:[:]

(1) Educational services for Choices participants [mandatory individuals; and exempt recipients who voluntarily participate in Choices services;] age 20 or older are non-core activities as defined in §811.25(a)(2) [of this chapter].

(2) Educational services for Choices participants [mandatory individuals; and exempt recipients who voluntarily participate in Choices services;] who are teen heads of household age 19 and younger are core activities as defined in §811.30 [§811.29 of this chapter].

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants [mandatory individuals; and exempt recipients who voluntarily participate in Choices services;] who are age 20 and older for the following educational or other training services:

(1) secondary school leading to a high school diploma or a GED credential, when required as a prerequisite for employment [certificate of general equivalence];

(2) Adult Basic Education (ABE), language instruction, or literacy instruction [Workforce Adult Literacy]; or

(3) other educational activities which are directly related to employment.

(c) A Board shall ensure educational services related to employment directly provide education, knowledge, and skills for specific occupations, work settings, jobs, or job offers.

(d) [(e)] Boards may count supervised [up to 5 hours per week of] study or homework time toward a Choices participant's [manda-



tory individual, and exempt recipient who voluntarily participates in Choices services,] family participation requirement if:

(1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;

(2) the educational institution's policy requires a certain number of out-of-class preparation hours ~~[for the class]; and~~

(3) study or homework time is ~~[has been]~~ directly monitored, supervised, and documented. ~~[verified from the educational institution; and]~~

~~[(4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services, is making progress as determined by the educational institution.]~~

(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.

(f) A Board shall ensure Choices participants enrolled in educational services are supervised daily.

(g) A Board shall ensure educational services are documented in TWIST at least every two weeks.

*§811.51. Post-Employment Services.*

(a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to Choices participants ~~[mandatory individuals, and exempt recipients who voluntarily participate in Choices services,]~~ who are employed, and to applicants, conditional applicants and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by Choices participants ~~[mandatory recipients, and exempt recipients who voluntarily participate in Choices services,]~~ for at least the length of time the Choices participants ~~[mandatory recipients, and exempt recipients who voluntarily participate in Choices services,]~~ receive TANF [temporary] cash assistance.

(c) A Board shall ensure that ongoing contact is established with Choices eligibles ~~[individuals]~~ receiving post-employment services at least monthly.

(d) (No change.)

(e) A Board may, through local policies and procedures, make post-employment services available to:

(1) former recipients who are denied TANF [temporary] cash assistance because of earnings; and

(2) sanctioned families and conditional applicants who obtain employment during their ~~[the one month of]~~ demonstrated cooperation period.

(f) The post-employment services may include the following:

(1) - (2) (No change.)

(3) work-related expenses, including those identified in §811.64 ~~[of this chapter];~~

(4) - (5) (No change.)

(6) referrals to available education or training resources to increase an employed Choices eligible's ~~[individual's]~~ skills or to help the individual qualify for advancement and long-term employment goals;

(7) - (8) (No change.)

(g) The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:

(1) (No change.)

(2) the risk of returning to public assistance. A person is considered at risk of returning to TANF [temporary] cash assistance if he or she is a food stamp recipient, or receives Commission-funded child care;

(3) - (4) (No change.)

(h) Post-employment service providers may include employers, community colleges, technical colleges, career ~~[proprietary]~~ schools and colleges, faith-based and community-based organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

TRD-200606102

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0829



**40 TAC §811.52**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed repeal affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

*§811.52. Parenting Skills Training.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2006

For further information, please call: (512) 475-0829



## SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

### 40 TAC §§811.61, 811.62, 811.65 - 811.67

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

#### §811.61. *Support Services.*

(a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices participants [~~individuals~~] to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices participants [~~individuals~~] are coordinated with the employer, when appropriate.

(b) A Board shall ensure that support services, including Commission-funded child care, are provided only to Choices participants [~~mandatory individuals; and exempt recipients who voluntarily participate in Choices services;~~] who are meeting work requirements set forth in §§811.16, 811.23, and 811.25 - 811.34 [~~811.25 - 811.32 of this chapter~~], and as set forth in §809.102 of this title. In applying this provision, a Board shall ensure support services are provided to Choices participants [~~a mandatory individual; and an exempt recipient who voluntarily participates in Choices services;~~] if it is determined support services are needed to comply with work requirements set forth in §§811.16, 811.23, and 811.25 - 811.34 [~~811.25 - 811.32 of this chapter~~], and as set forth in §809.102 of this title.

(c) A Board shall ensure that:

(1) support services are terminated immediately upon a determination of failure to meet work requirements by Choices participants [~~mandatory individuals; or exempt recipients who voluntarily participates in Choices services;~~] failure to meet work requirements;] unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;

(2) - (3) (No change.)

(d) A Board shall ensure that support services, classified as cash assistance, for:

(1) applicants and former recipients do not extend beyond four months for those who are unemployed and not receiving TANF [~~temporary~~] cash assistance; and

(2) unemployed conditional applicants and sanctioned families do not extend beyond their [~~the one month of~~] demonstrated cooperation period.

#### §811.62. *Child Care for Choices Eligibles [~~Individuals~~].*

(a) - (d) (No change.)

#### §811.65. *Wheels to Work.*

(a) The Commission may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices eligibles [~~individuals~~] who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may, through local policies and procedures, establish services to assist Choices eligibles [~~individuals~~] who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) (No change.)

#### §811.66. *General Educational Development Credential [~~Certificate of General Equivalence (GED)~~] Testing Payments.*

A Board shall ensure that the cost [~~of certificate~~] of GED testing and issuance of the credential [~~certificate~~] is paid through direct payments to the GED test centers and the Texas Education Agency for Choices participants [~~individuals~~] referred for testing by a Board's provider of Choices services.

#### §811.67. *Individual Development Accounts [~~IDAs~~].*

(a) A Board may set local policy and procedures to provide for implementation and oversight of Individual Development Accounts (IDAs) [~~IDAs~~] under this section using TANF funds in accordance with 45 C.F.R. §§263.20 - 263.23. An IDA means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.

(b) (No change.)

(c) Choices participants [~~individuals~~] may be eligible for IDAs if all of the requirements of this section are met.

(d) - (f) (No change.)

(g) A Board shall ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:

(1) - (2) (No change.)

(3) to HHSC [~~TDHS~~] within seven working days of the unauthorized withdrawal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2006.

TRD-200606104

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 11. ADMINISTRATIVE DEPARTMENT

##### 13 TAC §11.9

The Texas Historical Commission adopts an amendment to §11.9 of Title 13, Part 2, Chapter 11 of the Texas Administrative Code (relating to Donations and Relationship with Affiliated Non-Profit Organization) without changes to the text proposed in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6441). The text of the section will not be republished.

This amendment is needed to comply with Texas Government Code, §2255.001, which provides that an agency that has a relationship with an affiliated nonprofit entity shall adopt rules defining the relationship between the agency and the affiliated nonprofit entity. The section defines when a contractual relationship may be established with an affiliated nonprofit agency, the handling of funds by the entity, the relationship of agency employees with the entity, the governance of the entity, and the use of agency property by the entity.

No comments were received on the amendment as proposed.

The amendment is adopted under Texas Government Code, §442.005(p) and (q). Texas Government Code, §442.005(p) states the commission may accept a gift, grant, devise, or bequest of money, securities, services, or property to carry out any purpose of this chapter, including funds raised or services provided by a volunteer or volunteer group to promote the work of the commission. The commission may participate in the establishment and operation of an affiliated nonprofit organization whose purpose it to raise funds for or provide services or other benefits to the commission. Texas Government Code, §442.005(q) provides the Commission with authority to promulgate rules that it considers proper for the effective administration of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606130

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Effective date: November 29, 2006

Proposal publication date: August 18, 2006

For further information, please call: (512) 463-8817



#### CHAPTER 21. HISTORY PROGRAMS

The Texas Historical Commission (Commission) adopts the repeal of §§21.1 (relating to Object), 21.2 (relating to Scope), and 21.8 (relating to Criteria Considerations); amendments to §§21.3 (relating to Definitions), 21.6 (relating to Historic Texas Landmark Designation), and 21.7 (relating to Application Requirements); and new §21.10 (relating to Ownership of Official Texas Historical Markers) in its History Programs chapter. The proposal is adopted without changes to the text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7078) and will not be republished.

The purpose of the adoption is to update and clarify the criteria for administering the Official Texas Historical Marker Program under policies and program guidelines as adopted by the Texas Historical Commission.

The Commission is adopting the proposal in order to make the Official Texas Historical Marker Program more flexible and responsive to public demand for markers. Some of the detailed requirements for application and documentation for markers are being moved to agency guidelines rather than rules. In addition, rather than accepting marker applications at any time, the Commission will set an annual deadline for submission of applications. The Commission believes this will make processing of marker applications more orderly and more user-friendly.

No comments were received on the proposal.

##### SUBCHAPTER A. INTRODUCTION

##### 13 TAC §21.1, §21.2

The repeal is adopted under the authority of Texas Government Code, §442.005(q), which authorizes THC to adopt rules to carry out its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606160

F. Lawrence Oaks  
Executive Director  
Texas Historical Commission  
Effective date: November 30, 2006  
Proposal publication date: September 1, 2006  
For further information, please call: (512) 463-8817



### 13 TAC §21.3

The amendments and new section are adopted under the authority of Texas Government Code, §442.005(q), which authorizes THC to adopt rules to carry out its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606162  
F. Lawrence Oaks  
Executive Director  
Texas Historical Commission  
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For further information, please call: (512) 463-8817



## SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

### 13 TAC §§21.6, 21.7, 21.10

The amendments and new section are adopted under the authority of Texas Government Code, §442.005(q), which authorizes THC to adopt rules to carry out its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606163  
F. Lawrence Oaks  
Executive Director  
Texas Historical Commission  
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For further information, please call: (512) 463-8817



### 13 TAC §21.8

The repeal is adopted under the authority of Texas Government Code, §442.005(q), which authorizes THC to adopt rules to carry out its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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F. Lawrence Oaks  
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## CHAPTER 26. PRACTICE AND PROCEDURE

### 13 TAC §26.24

The Texas Historical Commission (hereafter referred to as the Commission) adopts amendments to §26.24 of Chapter 26 (Title 13, Part 2, of the Texas Administrative Code), related to Reports Relating to Archeological Permits, with changes to text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6604).

The adoption of these rule amendments is needed to improve the quality of reports produced under Antiquities Permits issued by the Commission and to eventually provide digital copies of the reports on-line.

One comment was received from The Port of Corpus Christi regarding adding a date to the title page and the Commission agrees with that comment. The rule amendment was changed to reflect this comment.

This amendment is adopted under the Texas Natural Resources Code, Title 9, Chapter 191 which provides the Commission with authority to promulgate rule that will reasonably effect the purposes of this chapter.

#### §26.24. *Reports Relating to Archeological Permits.*

(a) A report should meet the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Full Reports, and must be submitted to the commission meeting the following requirements.

(1) The report must contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, the county or counties the investigations were performed in, and the Antiquities Permit number, and date of publication of report;

(B) an abstract containing descriptions of the findings, a list of the sites recorded and a clarification concerning which artifacts were curated and where they are or will be curated;

(C) specific recommendations of which sites merit official designation to State Archeological Landmark status; which sites appear to be eligible for inclusion in the National Register of Historic Places; and which sites will be adversely affected by a proposed project.

(2) One copy of the draft permit report must be submitted to the commission for review prior to the production of the final report. The draft report does not have to be bound, but should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the commission.

(3) Upon completion of a permitted project, and at no charge to the commission, the permittee, sponsor, or principal investigator shall furnish the commission with 20 copies of the final report (one of which shall be an unbound copy that contains at least one map with the plotted location of any and all sites recorded), and a tagged PDF format of the report on a archival quality CD or DVD.

(4) A completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final reports and an electronic copy of the abstract and the completed abstract form must also be forwarded to the commission and when appropriate, a Curation Form (printed copies available from the commission or also online at [www.thc.state.tx.us](http://www.thc.state.tx.us)) must also be submitted with the final reports.

(b) When Antiquities Permit investigations result in negative findings, the report standards shall meet the CTA Guidelines for Cultural Resources Management Short Reports. The principal investigator, investigative firm, state agency, and/or the political subdivision shall furnish the commission with 20 copies of the Short Report at no charge to the commission along with a completed Abstracts in Texas Contract Archeology Summary Form (printed copies available from the commission or also online at [www.thc.state.tx.us](http://www.thc.state.tx.us)).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606083  
F. Lawrence Oaks  
Executive Director  
Texas Historical Commission  
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Proposal publication date: August 25, 2006  
For further information, please call: (512) 463-1858



## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS**

##### **16 TAC §59.3**

The Texas Commission of Licensing and Regulation ("Commission") adopts an amendment to an existing rule at 16 Texas Administrative Code ("TAC"), Chapter 59, §59.3 relating to the continuing education program as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7212), without changes, and will not be republished.

Texas Occupations Code, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the Commission adopted rules at 16 TAC Chapter 59. The chapter contains rules of general applicability that currently apply to air conditioning and refrigeration contractors, auctioneers and associate auctioneers, cosmetologists, electricians, licensed court interpreters, property tax consultants, and registered accessibility specialists. The rule adoption add

water well drillers and pump installers, and apprentices to the coverage of Chapter 59.

The rule adoption implements Texas Occupations Code, §51.405 with respect to the water well drillers and pump installers program and will allow providers of continuing education for the water well driller and pump installer program to register with the Texas Department of Licensing and Regulation ("Department"). Once a specific continuing education rule is in place for the water well driller and pump installer program, providers will be able to obtain approval for courses. The provisions of Chapter 59, including fee provisions, will apply to the water well driller and pump installer program. Continuing education requirements that are specific to the water well drillers and pump installers program will be contained in the rules for the program.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on September 8, 2006. The comment period closed on October 9, 2006. No public comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapters 51, 1901, and 1902, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-7348



#### **CHAPTER 67. AUCTIONEERS**

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), Chapter 67, §§67.21, 67.22, 67.25, 67.40, 67.65, 67.80, and 67.94; new rule §§67.23, 67.24, and 67.72; and the repeal of §§67.41, 67.42, 67.60, 67.81 - 67.83, 67.90, and 67.100 - 67.102 regarding the auctioneers program as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6442), without changes, and will not be republished. The Commission also adopts amendments to existing rule §§67.10, 67.20, and 67.70 and new rule §67.71 as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6442) with changes from the rules as proposed and are republished.

The adopted amendments, new rules, and repeals update statutory references and bring rule requirements more in line with state and federal law. In addition, the rule changes reorganize certain provisions for greater clarity and readability and delete unnecessary provisions. The rule adoption also more clearly spell out requirements for associate auctioneers and licensed auctioneers who sponsor associates.

The notice of the proposed amendments, new, and repealed rules was published in the August 18, 2006, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on September 18, 2006. The Department received thirteen public comments.

Nine commenters (one commenter filed two comments saying essentially the same thing) all addressed the issue of whether an associate auctioneer who desires to become licensed without taking an examination must be licensed as an associate auctioneer for two years. The proposed rules do not include such a requirement although the rules currently in effect do include the requirement. The rules adopted by order dated October 18, 2006, do include a requirement that associate auctioneers be licensed for two years. This change is made in response to the numerous comments requesting that the requirement not be deleted from the rules, therefore, §67.20(b)(3)(B) is amended to read: "provide proof of having been licensed as an associate auctioneer for at least two years and having been employed and trained by a licensed auctioneer for at least two years and of having participated in at least ten auctions."

A commenter asked that the rules allow persons who become licensed without passing an examination under the provisions of Texas Occupations Code, §1802.052(3)(B) to forego the requirement to have completed 80 hours of classroom instruction at an auction school approved by the Department. That requirement is specifically set out in Texas Occupations Code, Chapter 1802 as one that applies to all licensees and it may not be waived by rule. No change is made from the rules as proposed in response to this comment.

One commenter noted orally that §67.70(e)(1) which provides that auctioneers are required to provide certain notices prior to beginning an auction should not include a statement that the auctioneer is covered by a Recovery Fund since the statement could be construed to mean that the auctioneer may recover damages from the fund, which is not correct. The fund exists to pay claims against auctioneers rather than claims by auctioneers. Accordingly, §67.70(e)(1) is amended to read: "(1) that the auctioneer conducting the sale is licensed by the department".

Another commenter proposed that the rules allow associate auctioneers to be supervised by any licensed auctioneer rather than requiring the associate to be supervised by only the sponsoring auctioneer. The statute at Texas Occupations Code, §1802.001(2) defines associate auctioneer "as an individual who is employed by and under the direct supervision of a licensed auctioneer." The department interprets this language to mean that an associate must be employed by and supervised by the same person. No change is made from this rule as proposed in regards to this comment.

Finally, for formatting consistency, the following changes were made from the rules as proposed: §67.10, paragraphs (5) and (6) are changed by deleting the word "Means"; the title of §67.20. License Requirements Auctioneer is changed to read: "License Requirements--Auctioneer"; the title of §67.70. Auctioneer Requirements is changed to read: "Requirements--Auctioneer";

and §67.71(c) and (d)(2)(C) are changed by deleting the word "rule" and replacing it with a section symbol (§) and adding the phrase "of this section".

#### **16 TAC §§67.10, 67.20 - 67.25, 67.40, 67.65, 67.70 - 67.72, 67.80, 67.94**

The amendments and new rules are adopted under Texas Occupations Code, Chapter 1802, and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1802, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

#### *§67.10. Definitions.*

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Auction without reserve--(also called Absolute Auction)--An auction in which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, and where the seller may not bid himself or through an agent.

(2) Auction with reserve--An auction in which the seller or his agent reserves the right to establish a minimum bid, accept or reject any and all bids, and withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.

(3) Bond--Recovery fund fee.

(4) Employed by a licensed auctioneer--Participating in all aspects of the auction business under the supervision of a licensed auctioneer.

(5) Operated--To have fiduciary and operational responsibilities for all aspects of an auction company's auctions conducted in Texas, and to have supervisory responsibility for the company's employees who perform auction functions in Texas.

(6) Participated--To have performed bid calling.

(7) Recurring basis--More than once every 12 months.

#### *§67.20. License Requirements--Auctioneer.*

(a) An applicant for licensure as an auctioneer must submit a completed application along with required fees.

(b) To obtain a license as an auctioneer an applicant must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a legal alien;

(3) either

(A) pass a written or oral examination provided by the department; or

(B) provide proof of having been licensed as an associate auctioneer for at least two years, and having been employed and trained by a licensed auctioneer for at least two years and of having participated in at least ten auctions;

(4) hold a high school diploma or a high school equivalency certificate;

(5) not have been convicted of a felony within five years of the application date; and

(6) show proof of successful completion of at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department.

*§67.70. Requirements--Auctioneer.*

(a) An auctioneer must list his license number in any yellow page advertisement which consists of more than name, address and phone number.

(b) An auctioneer must furnish to the department the name, including assumed names, address, and phone number of all auction companies which he owns or operates.

(c) A licensee may not allow any person who is not either a licensed auctioneer or a licensed associate auctioneer to call bids at a sale.

(d) A licensee may not knowingly use, or permit the use of, false bidders, cappers, or shills at any auction.

(e) Before beginning an auction, a licensee must announce, give notice, display notice and/or disclose:

(1) that the auctioneer conducting the sale is licensed by the department;

(2) the terms and conditions of the sale including whether a buyer's premium will be assessed; and

(3) if the owner, consignor, or agent thereof has reserved the right to bid.

(f) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

(g) All auctioneers shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The licensees may use a sticker or rubber stamp to convey the required information. The notification shall be included on any seller or consignor contract and on at least one of the following:

- (1) a sign prominently displayed at the place of the auction;
- (2) bills of sale or receipt to be given to buyers; or
- (3) on bidder cards.

(h) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.

(i) Any statement in an advertisement for an auction that alters the meaning of another statement in the advertisement must be in a type font at least as large as the type font of the statement it alters.

(j) An auctioneer must report any change of address to the department within 30 days.

(k) Each licensed auctioneer must:

(1) maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which shall come into the auctioneers possession;

(2) deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner/consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts;

(3) pay any public monies, including but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and

(4) pay all amounts due the seller within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.

(l) Each licensed auctioneer shall keep records relative to all auctions for at least two years from the date of the sale.

(m) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.

(n) In addition, the auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.

*§67.71. Requirements--Sponsoring Auctioneer.*

(a) There must be a legitimate employee-employer relationship between an associate auctioneer and the sponsoring auctioneer or between the associate and an auction company operated by a licensed auctioneer that employs the sponsoring auctioneer.

(b) A sponsoring auctioneer must be on premises and directly supervising an associate auctioneer when the associate is bid calling.

(c) A sponsoring auctioneer is responsible for supervision of an associate auctioneer as he performs the items listed in §67.72(c) of this section.

(d) An auctioneer who terminates his sponsorship of an associate auctioneer must:

- (1) within thirty days notify the Department in writing; and
- (2) provide signed documentation to the associate auctioneer showing:
  - (A) the beginning and ending date of the sponsorship;
  - (B) date and location of up to ten auctions bid called by the associate;
  - (C) items listed in §67.72(c) of this section that the associate has performed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.

Executive Director

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For further information, please call: (512) 463-7348



**16 TAC §§67.41, 67.42, 67.60, 67.81 - 67.83, 67.90, 67.100 - 67.102**

The repeals are adopted under Texas Occupations Code, Chapter 1802, and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeals are those set forth in Texas Occupations Code, Chapter 1802 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adopted repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**CHAPTER 76. WATER WELL DRILLERS AND  
WATER WELL PUMP INSTALLERS**

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), Chapter 76, §§76.10, 76.204, 76.205, 76.206, 76.1000, 76.1004, and 76.1005; new rule §76.250; and the repeal of §76.220 and §76.910, regarding the water well drillers and water well pump installers program as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7213), without changes, and will not be republished.

The adopted amendments, new rules, and repeals update statutory references and bring rule requirements more in line with state and federal law. In addition, the rule changes reorganize certain provisions for greater clarity and readability and delete unnecessary provisions. The rule adoption also add continuing education requirements that are consistent with 16 TAC Chapter 59 regarding continuing education and continuing education providers and courses.

The notice of the proposed amendments, new rule and repeal was published in the September 8, 2006, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on October 9, 2006. The Water Well Drillers Advisory Council met on July 12, 2006 and recommended adoption of these rule changes. The Texas Department of Licensing and Regulation ("Department") received comments from the Texas Oil and Gas Association commenting on four different sections of the proposed rules.

The Association recommended that new definition §76.10(33) not be added since the new definition is not found elsewhere in the rules. The purpose of the new definition is to make it clear that a pump installer's license is required of persons who remove pumps from a well. The definition accomplishes this purpose

though inartfully. The Department will consider replacing this definition with another at some time in the future. No change is made.

The Association stated its full agreement with new §76.1000(m) which prohibits placement of contaminated material in a water well. No change is made.

The Association objected to the inclusion of a reference to city ordinances in new language for §76.1004(a), which will require that wells be plugged in compliance with local ground water conservation district rules and city ordinances. The Association feels that it is not appropriate to afford to city ordinances jurisdiction that is equal to that of groundwater conservation district rules. It also expressed concern about split or multiple jurisdictions for management of an important natural resource. This amendment was proposed to make the plugging requirements language more closely track well construction requirements language. Section 76.1000(a) already has the same language that was proposed for §76.1004(a). No change is made.

The Association also objected to proposed language in §76.1004(a)(4) providing that bentonite grout may not be used to plug a well if a water zone contains chlorides above 1500 ppm because the limit appears to be too restrictive. The Association indicated that a more reasonable limit would be 6000 ppm based on what experts find is satisfactory for burial of chlorides. Here too, the change was proposed to make the plugging requirements language more closely track well construction requirement language. Section 76.1001(3) and (4) provide that for completion, bentonite grout may not be used when a water zone contains more than 1500 ppm of chlorides. The Department recognizes that bentonite may adequately seal out water that contains more than 1500 ppm of chlorides, but it is of the opinion that in the interest of protecting groundwater a cushion should be maintained. No change is made.

**16 TAC §§76.10, 76.204 - 76.206, 76.250, 76.1000, 76.1004, 76.1005**

The amendments and new rule are adopted under Texas Occupations Code, Chapters 51, 1901, and 1902, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-7348



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## 16 TAC §76.220, §76.910

The repeal is adopted under Texas Occupations Code, Chapters 51, 1901, and 1902, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 78. TALENT AGENCIES

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.75, 78.80, and 78.90, and the repeal of §§78.22, 78.71, 78.74, 78.82, and 78.100 regarding the talent agencies program without changes as published in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5513) and will not be republished. The Commission also adopts amendments to existing rule §78.72 as published in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5513) with changes from the rule as proposed and is republished.

The adopted amendments and repeals clarify registration requirements such as out-of-state talent agency websites and advertisements in Texas and out-of-state talent agencies operating temporarily in Texas and delete references within the chapter to "open model calls" and "personal agents" to emphasize that a talent agency is a person or entity under any name or title who is in the business of performing services described under the Act. In addition, the adopted rules add registration requirements relating to a talent agency's change of ownership and change of location; state initial and renewal application requirements; remove certain exemptions from the chapter that are not statutorily based; clarify surety bond requirements and add submission of proof of a surety bond in good standing for talent agency renewal registrations to improve compliance with the Act and to protect consumers. The adopted amendments and repeals also remove an existing provision that allows out-of-state agencies to operate in Texas if hosted by a Texas-registered talent agency; remove a requirement for talent agencies to file a schedule of commissions and fees with the department; and clarify the statutory prohibition against registration or advance fees in light of industry concerns for talent agencies' ability to charge artists fees for internet websites, photographs, and training sessions. Finally, the adopted

rules clarify the number of days in which a talent agency must deposit monies received from a client and the number of days in which to disburse those monies to the artist; clarify the existing annual fee, without substantive change, and reduce the fee for a talent agency to obtain a revised/duplicate certificate of registration; and clarify sanctions against a talent agency when the talent agency holds a registration at more than one Texas location.

The notice of the proposed amendments and repealed rules was published in the July 14, 2006, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on September 29, 2006. The Department received 2 comments to the proposed talent agency rules, one from a talent agency and one from the Screen Actors Guild. The following is a summary of the 2 comments and the department's responses.

### *Talent Agency Comment*

The summary of and the Department's responses to the talent agency's comment is organized into 5 parts as presented by solid lines in the original comment.

### *Part 1 of the Talent Agency Comment*

The comment disagreed with the statutory definition of a talent agency under the Act as it is referenced throughout the proposed rules. The comment specifically objected to the portion of the definition under Texas Occupations Code §2105.001(6) that states that a talent agency includes "a person that counsels or directs an artist in the development of the artist's professional career." The comment stated that this portion of the statutory language may be misconstrued by the department, that it was not the Code's intent to regulate industry professionals who counsel and direct artists, and that a literal interpretation would require industry professionals such as acting schools, acting teachers, coaches, instructors, professors, consultants, directors, website database services, and managers/agents to obtain a talent agency registration. The comment requested that proposed §78.30, "Exemptions," be amended to exempt from registration requirements persons who counsel or direct artists in the development of the artist's professional career.

### *Department's Response to Part 1 of the Talent Agency Comment*

The definition of a talent agency that the comment objected to, "a person that counsels or directs an artist in the scope of the artist's professional career," is part of the statutory definition of a talent agency under Texas Occupations Code §2105.001(6). In analyzing legislative intent, the statute could have been limited to persons who obtain or attempt to obtain employment for artists; however, the statute specifically includes persons who counsel or direct an artist in the development of an artist's professional career. The department cannot change the statutory definition of a talent agency by rule or draft exemptions to exclude persons who counsel or direct artists in contravention of the statute.

In response to the comment's concern that the phrase "counsels or directs" will be applied literally and misconstrued, the legal conclusion that a person has counseled or directed an artist in the development of the artist's professional career is based on facts specific to each case. Under Texas Government Code, Chapter 2001, contested cases may be heard by an administrative law judge who will interpret the meaning of "counsels or directs" within the scope of Texas Occupations Code, Chapter 2105. Further, at this time, the proposed rules do not propose a definition for "counsels or directs" and the department cannot

add such definition to the rules without separate rulemaking and an opportunity for persons to comment on a proposed definition for "counsel and direct."

In response to the comment's statement that the proposed rules require schools, acting teachers, professors, coaches, etc. to obtain a talent agency registration, there is specific legislative intent for activities, such as counseling and directing, to occur exclusively within an educational setting under the authority of the Education Code, including regulations by the Texas Workforce Commission relating to modeling schools. A person who "counsels or directs" exclusively within the scope of another statute is not within the scope of the statute requiring a talent agency registration. In regard to the other individuals listed in the comment, such as industry consultants, directors, website database services, and managers/agents, the department emphasizes that a person under any name or title who is in the business of performing the services under the Act must obtain a Texas talent agency registration; however, to the extent that such persons are employees of a registered talent agency acting within the scope of their authority as a lawful representative of the employing talent agency, then employees of a registered talent agency do not need a separate talent agency registration for their activities.

#### *Part 2 of the Talent Agency Comment*

The comment disagreed with the proposed deletion of existing §78.10(3) and §78.70(b), relating to open model calls, stating that the open model call and convention producer rules are now unclear. According to the comment, industry standards dictate that open model calls are for talent who are not previously signed by the agency that is hosting the model call. However, the comment requests a distinction be allowed for hosting out-of-state agencies' open model calls for the purpose of scouting talent already signed to an agency's roster. Further, the comment requests rules relating to scouting. The comment stated that "scouting" does not fall within any portion of the definition of a talent agency and expressed concern that the rules should allow Texas talent agencies to be able to host out-of-state agencies for the purpose of scouting talent already signed to their roster.

The comment also disagreed with proposed §78.10(5), defining "talent agency location," with respect to that definition's inclusion of out-of-state talent agencies that perform services under the Act from a temporary location in Texas. The comment urges that a distinction be made in the registration requirements. The comment agrees with the proposed rules requiring a talent agency registration for out-of-state talent agencies that come to Texas to obtain or attempt to obtain employment for artists. However, the comment requests that if an out-of-state talent agency comes to Texas to either: (1) scout talent already signed by Texas-registered talent agencies, or (2) counsel or direct an artist in the development of the artist's professional career, then the out-of-state talent agency's acts in Texas should not be subject to the Texas talent agency Act.

#### *Department's Response to Part 2 of the Talent Agency Comment*

Proposed §78.20(b) imposes a registration requirement on a person by any name or title who is in the business of performing the services described under the Act and performs those services from a place of business or temporary location in Texas. This rule eliminates confusion with industry titles that may change over time or develop synonyms, companies that may provide a changing variety of services over time, and other nuances. Whatever the title, whether a person is required to obtain a talent agency registration under the Act is a factual

analysis of whether the person is providing services under the definition of a talent agency under Texas Occupations Code, §2105.001(6). The proposed rule focuses on statutory acts within Texas' jurisdiction that require a talent agency registration; labels and titles cannot be determinative of this issue. In application, if a person or entity operating under the name "open model call," "convention producer," or any other name or title performs services described under the Act and performs those services from a place of business or a temporary location in Texas, then that person must have a talent agency registration. There is no statutory exemption for persons operating under certain names, such as "open model calls" or "convention producers" to perform talent agency acts in Texas without a Texas registration.

In response to the comment's concern and request for the proposed rules to distinguish between "open model calls" or "scouting" for artists who either are or are not signed by agencies hosting the open model call(s), the Act does not distinguish licensing requirements depending on such criteria. Accordingly, the department cannot and does not seek to propose rules that reach a distinction in registration requirements.

In response to the comment's concern about whether an out-of-state talent agency needs a Texas talent agency registration when it comes to Texas and does not perform talent agency acts as they are defined under the statute, neither the proposed rules, nor the Texas talent agency statute imposes registration requirements on persons who are not performing talent agency acts within the statutory definition of a talent agency. In other words, the department has not proposed rules to prohibit or limit a talent agency's ability coordinate with an out-of-state agency when the out-of-state agency is not performing any services described under the Act.

#### *Part 3 of the Talent Agency Comment*

The comment disagreed with proposed §78.10(3) and §78.70(b) and stated that the proposed rules were unclear about the type of financial information that must be disclosed to artists, and questions whether the proposed rules intend to impose a requirement to disclose income margins, trade secrets, and accounting/operational/infrastructure procedures. Also, the comment disagreed with proposed §78.70(b) on the basis that it was confusing about whether a talent agency must provide a contract for each product or service or whether an agency's initial contract with an artist may contain a one-time "blanket" disclosure. Finally, the comment questioned whether the proposed rules required talent agencies to have a written contract with product and services providers.

#### *Department's Response to Part 3 of the Talent Agency Comment*

The proposed rules do not provide detailed information to be disclosed because there are no proposed requirements for detailed information to be disclosed. Proposed §78.70(b) requires only that if a talent agency has a financial interest in a person providing a product or service, then that fact must be disclosed to the artist. Proposed §78.10(3) defines whether a talent agency has such a financial interest. No proposed rule imposes any further requirement.

Under Texas Occupations Code §2105.151, a contract entered into between a talent agency and an artist for the purchase of services must be in writing and signed by the artist, and further, subject to the refund provisions in §2105.152. Proposed §78.70(b) requires a written contract for an artist's purchase of a service or product from a talent agency that is not required for

representation. The comment questions whether the language of proposed §78.70(b) would allow a one-time blanket disclosure in the artist's initial contract would be sufficient under this proposed rule. Proposed §78.70(b) specifically addresses an artist's purchase(s) of services or products that are not a condition of representation or registration, and requires such purchase(s) to be evidenced by a written agreement. The department believes that this language is sufficiently clear to require documentation of purchases as they may occur throughout the course of a talent agency's representation of an artist, and not a one-time disclosure upon an agreement of representation. Finally, the proposed rules address a talent agent's disclosure to artists only, not to service or product providers.

#### *Part 4 of the Talent Agency Comment*

The comment disagreed that existing §78.75(d) language "relocated" to proposed §78.72(b) on the basis that existing §78.75 does not apply to stating the commissions charged to an artist. Existing §78.75(d) states, "When the talent agency bills an artist it must provide the artist an itemized statement of the nature of the charges and a copy of the invoice or receipt." The portion of proposed language relocated to proposed §78.72(b) requires "a written statement of the specific nature and amount charged to the artist." The comment complained that the proposed language seemed to include a statement of the commission(s) charged to the artist while the existing language did not. Further, the comment stated that even so, proposed §78.72(b) is redundant because the amounts owed (commissions charged) are disclosed to an artist in a talent agent's initial contract with an artist.

Also, the comment disagreed with proposed §78.72(a) and (b) on the basis that talent agencies are paid approximately 2-5 months after an artist's employment, that talent agencies cannot be aggressive about money collection, and that union and non-union client/employers provide agencies payment based on varying industry standards. The comment expressed concern with complying with the disbursement of monies in the proposed rules, stating that an agency runs a significant risk of issuing payments that have not yet cleared; the comment stated that it takes upwards of 2 weeks for a financial institution to clear a check. The comment also referenced California law allowing talent agents 30 days to disburse money owed to an artist. The comment requested the proposed rule be amended to allow an agency to issue an artist's payment 30 business days after depositing the artist's monies from the client/employer.

#### *Department's Response to Part 4 of the Talent Agency Comment*

The relocated language from existing §78.75(d) to proposed §78.72(b) makes the following changes: a talent agency "must provide the artist an itemized statement" (existing language) is changed to "a written statement" (proposed language); and a statement of "the nature of the charges and a copy of the invoice or receipt" (existing language) is changed to "the specific nature and amount charged to the artist" (proposed language). The department believes the proposed language is fairly characterized as "relocated" language. Although the comment assumes an exclusion of commissions in the existing requirement under §78.75(d) (that states: "when a talent agency bills an artist, the talent agency must provide the artist an itemized statement of the nature of the charges and a copy of the invoice or receipt"), the department stresses that there is no such exclusion within the language of existing §78.75(d) and, similarly, no such exclusion within proposed §78.72(b).

In response to the comment's disagreement that it is redundant for an artist to see the agency's commission charges on a written statement because the initial contract generally states the agency's commission percentage(s) and/or fee(s), the department believes the amount(s) charged to an artist for a talent agency's service must necessarily reflect the amount paid by the artist to the talent agency, i.e. including commission charges withheld by the talent agency, for a particular employment.

In response to the comment's concern about the disbursement of monies, proposed §78.72(a) and (b) changes "banking" days to "calendar" days for clarity in calculating days and eliminates a talent agency's ability to contract with an artist to regarding the number of days in which artist funds may be disbursed in conformity with Texas Occupations Code, §2105.105. To address the comment's concerns, talent agents are *not* required to receive monies from clients (an artist's employer) within 7 days. Proposed §78.72(a) only requires that once a talent agency receives monies from a client, that the talent agency deposit such monies with a financial institution within 7 calendar days (existing language states 5 banking days). Proposed §78.72(b) requires that the talent agency disburse the artist's monies within 14 calendar days of receipt (existing language states 10 banking days). At the Commission meeting held on October 18, 2006, the Commission adopted §78.72(b) with a change from the proposed language of "fourteen calendar days" to the adopted language of "twenty-one calendar days" in which a talent agency must disburse artist funds after receipt by a talent agency. The basis for the change was practical considerations regarding the number of days in which a financial institution will clear deposited monies. Further, proposed §78.72(b) deletes existing language that allows talent agencies to contract with artists for the period of time in which artist funds would be disbursed. According to the talent agency's written comment and the oral comment to the proposed rules at the October 18, 2006, Commission meeting, the industry standard for such contract provides for thirty days in which a talent agency must disburse artist funds. The proposed provision that eliminates the language that allows talent agencies to contract with artists about the disbursement of funds is a change in talent agencies' business operations. Section 78.72(b) is adopted with a change to require that an artist's funds be disbursed to the artist within 21 calendar days upon receipt by a talent agency, which protects artists in setting a prescribed standard under Texas Occupations Code §2105.105 and also allows time for talent agencies to comply with the rule based on practices of financial institutions.

#### *Part 5 of the Talent Agency Comment*

The comment expressed concern about proposed §78.75, relating to splitting or sharing fees, by asking whether an employee who works on commission with a talent agency must be registered under the Act.

#### *Department's Response to Part 5 of the Talent Agency Comment*

Texas Occupations Code §2105.201 prohibits a talent agency from splitting or sharing fees with a person who is not registered under the Act. If acting within the scope of their duties at a registered talent agency, employees of a registered talent agency are not required to hold a registration separate from their employer, but are a lawful representative of the registered talent agency. A registered talent agency's method of payment to an employee, whether by hourly, salary, commission/bonus, or any other method, is not regulated under the Act and is not unlawful fee splitting under the Act.

### *Screen Actors Guild Comment*

The Screen Actors Guild agreed with proposed §78.20 (registration and renewal requirements), §78.40 (surety bond requirements), §78.72 (treatment of artists' monies), and §78.75 (establishment of prohibited practices such as charging fees for websites, workshops, or photographs in exchange for representation or registration).

The Screen Actors Guild disagreed with the proposed repeal of existing §78.21(b)(4) which repeals the requirement for talent agencies to file their schedule of commissions and fees with the department. They also disagreed with the proposed repeal of existing §78.21(b)(2) and (b)(3) which repeal the requirement for talent agencies to notify the department of a talent agent's financial interest in certain businesses. The comment stated that the proposed repeals facilitate an environment of abuse and allow talent agents to engage in business opportunities that include inherent conflicts of interest.

### *Department's Response to the Screen Actors Guild Comment*

The department does not review a talent agency's schedule of commissions and fees, as the department does not have the authority to either grant or deny a talent agency's registration application based on the information provided in the schedule of commissions and fees submitted by the talent agency. Proposed §78.70(d) requires a talent agency to disclose the agency's commissions and fees, in writing, to the artist. Such disclosure provides direct communication to the artist. Submitting such disclosure *to the department* provides no service for the agency, the artist, or the business transaction.

Similarly, in response to the comment's disagreement in eliminating disclosure *to the department* of a talent agency's financial interest in other persons/entities providing services, the department emphasizes that these disclosure provisions are proposed to now be disclosed directly to the artist. The department did not review this information and such repository of information with the department provides nothing to prospective artists considering the representation of a talent agency. On the other hand, proposed §78.70(b) allows these important disclosures to be made directly to the artist.

### **16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.72, 78.75, 78.80, 78.90**

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2105, which authorize the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2105. No other statutes, articles, or codes are affected by the adoption.

#### *§78.72. Responsibilities of the Registrant--Treatment of Monies.*

(a) A talent agency that receives any payment of monies from a client on behalf of an artist shall, within seven calendar days, deposit that amount in an account maintained by the talent agency in a federally insured financial institution. This subsection does not prohibit the practice of "check swapping" as that term is commonly used in the talent agency industry.

(b) All monies received from a client that are owed to an artist must be disbursed to that artist no later than twenty-one calendar days after receipt by the talent agency, including a written statement of the specific nature and amount charged to the artist.

(c) Within 48 hours of an artist's request, a talent agency shall disclose to the artist, in writing, the terms of all agreements between the talent agency and a client that relate to the artist's employment with the client, including the nature and amount of all monies received from the client.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606139  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: December 1, 2006  
Proposal publication date: July 14, 2006  
For further information, please call: (512) 463-7348



### **16 TAC §§78.22, 78.71, 78.74, 78.82, 78.100**

The repeals are adopted under Texas Occupations Code, Chapter 2105, and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeals are those set forth in Texas Occupations Code, Chapter 2105 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adopted repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.  
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Texas Department of Licensing and Regulation  
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## **TITLE 22. EXAMINING BOARDS**

### **PART 15. TEXAS STATE BOARD OF PHARMACY**

#### **CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS**

##### **22 TAC §283.8**

The Texas State Board of Pharmacy adopts amendments to §283.8 concerning Reciprocity Requirements. The amendments are adopted without changes to the proposed text as

published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7219).

The amendments require reciprocity applicants to submit fingerprint information in order for the Board to access criminal history information.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §411.084 as authorizing the agency to obtain criminal history information from the Federal Bureau of Investigations.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 411, Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 291. PHARMACIES

### SUBCHAPTER A. ALL CLASSES OF PHARMACIES

#### 22 TAC §291.1

The Texas State Board of Pharmacy adopts amendments to §291.1 concerning Pharmacy License Application. The amendments are adopted without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5005).

The amendments require applicants to submit fingerprint information in order for the Board to access criminal history information.

Written comments were received from the National Association of Chain Drug Stores (NACDS) and Wal-Mart Pharmacy. NACDS recommended that the submission of fingerprint information would not be required for pharmacy applicants that were publicly-held corporations. NACDS stated that it would not be feasible for the pharmacy applicant to submit fingerprint information for the owner and that corporations perform their own background checks for the corporate officers and managers. Wal-Mart recommended that the submission of fingerprint information not be required for publicly-held corporations with a certain verifiable annual revenue. The Board disagrees with

these comments and believes that submission of fingerprint information is necessary in order to ensure that only qualified individuals are allowed to own pharmacies.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §411.084 as authorizing the agency to obtain criminal history information from the Federal Bureau of Investigations.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 411, Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



#### 22 TAC §291.21

The Texas State Board of Pharmacy adopts amendments to §291.21, concerning Notification to Consumers. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7220).

The amendments require pharmacies that maintain a generally accessible website to post, on the home webpage, information on how to file a complaint with the Board.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 562.1045 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.1045 as authorizing the agency to adopt rules requiring pharmacies that maintain a generally accessible site on the Internet to post certain information on how to file a complaint with the Board.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

### 22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7221).

The amendments require pharmacies to supply records when requested by the Texas State Board of Pharmacy within 72 hours of the request.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

### 22 TAC §291.55

The Texas State Board of Pharmacy adopts amendments to §291.55, concerning Maintenance of Records. The amendments are adopted without changes to the proposed text as

published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7222).

The amendments require pharmacies to supply records when requested by the Texas State Board of Pharmacy within 72 hours of the request.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

### 22 TAC §291.75

The Texas State Board of Pharmacy adopts amendments to §291.75, concerning Records. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7223).

The amendments require pharmacies to supply records when requested by the Texas State Board of Pharmacy within 72 hours of the request.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Free-standing Ambulatory Surgical Center. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7223).

The amendments require pharmacies to supply records when requested by the Texas State Board of Pharmacy within 72 hours of the request.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

### 22 TAC §291.105

The Texas State Board of Pharmacy adopts amendments to §291.105 concerning Records. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7224).

The amendments require pharmacies to supply records when requested by the Texas State Board of Pharmacy within 72 hours of the request.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.3

The Texas State Board of Pharmacy adopts amendments to §297.3 concerning Registration Requirements. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7224).

The amendments prohibit a pharmacy technician from applying as a pharmacy technician trainee.

No comments were received.

The amendments are adopted under §§551.002, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 311. CODE OF CONDUCT

### 22 TAC §311.1

The Texas State Board of Pharmacy adopts amendments to §311.1 concerning Procedures. The amendments are adopted without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7225).

The amendments clarify that complaints filed against a Board employee are handled by the Executive Director.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
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For further information, please call: (512) 305-8028



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 513. REGISTRATION

#### SUBCHAPTER B. REGISTRATION OF CPA FIRMS

### 22 TAC §513.15

The Texas State Board of Public Accountancy adopts an amendment to §513.15 concerning Firm Offices with changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8328). The Board inserted "located in Texas" and deleted "in which the firm offers services to the

public in Texas" from subsection (a) of the proposed rule revision so that subsection (a) of §513.15 reads: "A Certified Public Accountancy Firm must hold a license for each office located in Texas." The Board deleted "who is directly responsible for the supervision of the professional services of that office at all times" from subsection (b) of the proposed rule revision so that subsection (b) of §513.15 reads: "Each office of a firm must be under the direct supervision of a resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act." The Board deleted "A resident manager who serves in that capacity for more than one office shall be responsible for violations of the Act or Rules that reflect inadequate supervision of any applicable office" from subsection (c) of the proposed rule revision so that subsection (c) reads: "A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise." The Board inserted subsection (d), which reads: "A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision."

The amendment will allow resident managers to manage more than one office.

The amendment will function by clarifying the resident manager role.

Four comments were received regarding adoption of the rule from D. Roger Nanney on behalf of Deloitte & Touche USA LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.

The first comment supports the rule amendment to permit a resident manager to supervise more than one office but suggested revising the proposed rule to clarify its scope. It stated that the rule as proposed could be read as requiring firm offices located in other states to be licensed by the Board.

In response to this comment, the Board does not intend to regulate offices in other states through this proposed regulation and agrees to add "located in Texas" to subsection (a) of the proposed rule revision so that subsection (a) of §513.15 reads: "A Certified Public Accountancy Firm must hold a license for each office located in Texas in which the firm offers services to the public in Texas."

The second comment suggests that, since the proposed rule makes a resident manager responsible for any violations of the Public Accountancy Act or Board rules within the offices supervised, the rule be clarified to make it clear the level of care imposed on resident managers of multiple offices be no greater than that imposed on managers of single offices.

In response to this comment, the Board believes that the rule as proposed neither states nor implies distinguishing between resident managers of multiple offices or resident managers of single offices. Adding language that addresses this comment could create confusion.

The third comment suggests that the Board should re-shape the supervisory standard for all resident managers. It suggests that, as the practice of accountancy increases in importance and difficulty, it becomes increasingly difficult for any one individual to directly supervise all activities within an office and advises that the UAA only requires that attest and compilation services be supervised by a CPA and does not require the resident manager



and the CPA supervising the attest and compilation services be the same person. The comment further states that, because of the diverse nature of modern practice, firms should be permitted to maintain supervisory authority and accountability without necessarily placing all ultimate responsibility for multiple offices on one person's shoulders.

In response to this comment, the Board does not in this proposed rule attempt to direct or limit how a firm establishes its organizational management. In order for the Board's regulation to be effective, however, it must look to the resident manager as having the responsibility for compliance with the Board's Act and Rules.

The fourth comment suggests that all parties would be best served if the Board eliminated the requirement that all firm offices be separately licensed with the Board and the firm office licensing process be combined with the firm licensing process.

In response to this comment, the Public Accountancy Act provides in §901.401 that each office of a certified public accountancy firm or a firm of public accountants must hold a license. Section 901.354(f) of the Public Accountancy Act contains language that states that an applicant for issuance or renewal of a firm license must register each office. In the absence of a legislative change to the Public Accountancy Act, this agency is required to require a license for each individual office. In an effort to assist firms with multiple offices, all offices of a firm will have the same license renewal date.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

*§513.15. Firm Offices.*

(a) A Certified Public Accountancy Firm must hold a license for each office located in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise.

(d) A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200606142

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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Proposal publication date: October 6, 2006

For further information, please call: (512) 305-7848

◆ ◆ ◆  
**CHAPTER 515. LICENSES**

**22 TAC §515.1**

The Texas State Board of Public Accountancy adopts an amendment to §515.1 concerning Licenses without changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8329). The text of the rule will not be republished.

The amendment will clarify the language in the rule.

The amendment will function by clarifying the rule regarding firm licensing.

One comment was received regarding adoption of the rule from D. Roger Nanney on behalf of Deloitte & Touche USA LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP. The comment suggests that all parties would be best served if the Board eliminated the requirement that all firm offices be separately licensed with the Board and the firm office licensing process be combined with the firm licensing process.

In response to this comment, the Public Accountancy Act provides in §901.401 that each office of a certified public accountancy firm or a firm of public accountants must hold a license. Section 901.354(f) of the Public Accountancy Act contains language that states that an applicant for issuance or renewal of a firm license must register each office. In the absence of a legislative change to the Public Accountancy Act, this agency is required to require a license for each individual office. In an effort to assist firms with multiple offices, all offices of a firm will have the same license renewal date.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606143

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: November 29, 2006

Proposal publication date: October 6, 2006

For further information, please call: (512) 305-7848

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**22 TAC §515.2**

The Texas State Board of Public Accountancy adopts an amendment to §515.2 concerning Initial License without changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8329). The text of the rule will not be republished.

The amendment will make the rule applicable to initial personal licenses applicable to firm licenses as well.

The amendment will function by consistently applying the rules to initial personal and firm licenses.

One comment was received regarding adoption of the rule from D. Roger Nanney on behalf of Deloitte & Touche USA LLP, Ernst & Young LLP, KPMG LLP and PricewaterhouseCoopers LLP. The comment suggests that all parties would be best served if the Board eliminated the requirement that all firm offices be separately licensed with the Board and the firm office licensing process be combined with the firm licensing process.

In response to this comment, the Public Accountancy Act provides in section 901.401 that each office of a certified public accountancy firm or a firm of public accountants must hold a license. Section 901.354(f) of the Public Accountancy Act contains language that states that an applicant for issuance or renewal of a firm license must register each office. In the absence of a legislative change to the Public Accountancy Act this agency is required to require a license for each individual office. In an effort to assist firms with multiple offices, all offices of a firm will have the same license renewal date.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §515.3

The Texas State Board of Public Accountancy adopts an amendment to §515.3 concerning License Renewal for Individuals and Firm Offices with changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8330). The Board deleted "registration date" from and inserted "renewal month" in subsection (c) of the proposed rule revision so that subsection (c) of §515.3 reads: "Licenses for offices of firms will have staggered expiration dates that will be due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. Staggered firm license expiration dates begin on January 1, 2007. All firms will be issued a license for a 12-month period following the initial licensing period."

The amendment will stagger expiration dates for firm licenses so that they occur throughout the year, rather than once a year.

The amendment will function by creating a more efficient system of processing firm licenses.

One comment was received regarding adoption of the rule from D. Roger Nanney on behalf of Deloitte & Touche USA LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP. The comment suggests that all parties would be best served if the Board eliminated the requirement that all firm offices be separately licensed with the Board and the firm office licensing process be combined with the firm licensing process.

In response to this comment, the Public Accountancy Act provides in §901.401 that each office of a certified public accountancy firm or a firm of public accountants must hold a license. Section 901.354(f) of the Public Accountancy Act contains language that states that an applicant for issuance or renewal of a firm license must register each office. In the absence of a legislative change to the Public Accountancy Act, this agency is required to require a license for each individual office. In an effort to assist firms with multiple offices, all offices of a firm will have the same license renewal date.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

### §515.3. License Renewal for Individuals and Firm Offices.

(a) Licenses for individuals will have staggered expiration dates based on the last day of the individuals' birth months. The license will be issued for a 12-month period.

(b) At least 30 days before the expiration of an individual's license, the board shall send written notice of the impending license expiration to the individual at the last known address according to board records.

(c) Licenses for offices of firms will have staggered expiration dates for payment of fees, which will be due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. Staggered firm license expiration dates begin on January 1, 2007. All firms will be issued a license for a 12-month period following the initial licensing period.

(d) At least 30 days before the expiration of a firm's office license, the board shall send written notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board.

(e) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license.

(f) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has notified the board of the peer review date assigned by a board approved sponsoring organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1 concerning Individual License Fees without changes to the proposed text as published in the October 6, 2006 issue of the *Texas Register* (31 TexReg 8331). The text of the rule will not be republished.

The amendment will lower the fee for a personal license from \$60.00 to \$45.00.

The amendment will function by providing a cost-effective license for persons certified by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

#### 22 TAC §523.144

The Texas State Board of Public Accountancy adopts an amendment to §523.144 concerning Board Registered CPE Sponsors after January 1, 2005 without changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8332). The text of the rule will not be republished.

The amendment will outline the procedure a former CPE sponsor must follow in order to gain reinstatement into the Board's CPE sponsor program.

The amendment will function by closely scrutinizing CPE sponsors who supply professional education to license holders.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



#### 22 TAC §523.146

The Texas State Board of Public Accountancy adopts an amendment to §523.146 concerning Registry of NASBA CPE Sponsors without changes to the proposed text as published in the October 6, 2006 issue of the *Texas Register* (31 TexReg 8333). The text of the rule will not be republished.

The amendment will clarify that sponsors registered with NASBA may still be subject to review by the Board.

The amendment will function by providing additional state review of sponsors registered with NASBA.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2006.

TRD-200606148  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

##### SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

###### 28 TAC §7.7

The Commissioner of Insurance adopts amendments to §7.7, concerning subordinated indebtedness of insurers. The amendments are adopted without change to the proposal published in the September 22, 2006 issue of the *Texas Register* (31 TexReg 8075).

The adopted amendments are necessary to add a new paragraph (3) to existing §7.7(f) to acknowledge that insurers may purchase, acquire, own, and hold as an admitted asset a subordinated indebtedness of a non-affiliated insurer that meets the requirements for rated and non-rated notes under the NAIC's Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles No. 41. The amendments are also necessary to: (i) define the term affiliate or affiliated in subsection (a)(1) (Definitions); (ii) clarify the definition of subordinated indebtedness in subsection (a)(3) (Definitions); (iii) delete superfluous language in subsection (b)(2) (General Provisions) that is redundant of the statute; (iv) clarify in subsection (c)(5) that, in the event of liquidation, any payment of interest and repayment of principal under the written agreement shall be made in accordance with the provisions of the Insurance Code Chapter 21A; (v) in subsection (d)(1)(G), require that the affidavit contain an affirmation that the insurer agrees to issue the subordinated indebtedness and receive funding within 15 days of the date the order of the Commissioner is entered approving the subordinated indebtedness, and that the executive officer agrees to provide the Texas Department of Insurance with written evidence that the subordinated indebtedness has been funded; (vi) clarify in subsection (f)(4) that an insurer may invest in, purchase, acquire, own and hold a subordinated indebtedness of an affiliated insurer and may report it as an admitted asset on its financial statements in an amount equal to the amount then due and payable under the terms of the subordinated indebtedness agreement; (vii) update obsolete references throughout the section due to the enactment of the nonsubstantive Insurance Code revision by the Legislature; and (viii) correct grammatical errors.

The adopted new §7.7(f)(3) requires insurers to calculate subordinated indebtedness pursuant to the NAIC's Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles No. 41. The new paragraph permits an insurer to report a subordinated indebtedness of a non-affiliated insurer as an admitted asset on its financial statements in an amount authorized by the Insurance Code.

The adopted amendment to subsection (f)(4) clarifies that an insurer may invest in, purchase, acquire, own and hold a subordinated indebtedness of an affiliated insurer and may report it as an admitted asset on its financial statements in an amount equal to the amount then due and payable under the terms of the subordinated indebtedness agreement.

The adopted amendment to subsection (d)(1)(G) requires that the affidavit contain an affirmation that the insurer agrees to issue the subordinated indebtedness and receive funding within 15 days of the date the order of the Commissioner is entered approving the subordinated indebtedness, and that the executive officer agrees to provide the Texas Department of Insurance with written evidence that the subordinated indebtedness has been funded.

The adopted amendments also: (i) provide that the term affiliate or affiliated in subsection (a)(1) (Definitions) has the same meaning as in the Insurance Code §823.003; (ii) clarify that the terms surplus notes, surplus debenture, contribution certificates, surplus capital notes, and premium income notes, bonds, or debentures have the same meaning as the term subordinated indebtedness is defined in subsection (a)(3) (Definitions); (iii) delete superfluous language relating to notice of a subordinated indebtedness agreement in subsection (b)(2) (General Provisions) that is redundant of the statute; (iv) clarify in subsection (c)(5) that, in the event of liquidation, any payment of interest and repayment of principal under the written agreement shall be made in accordance with the provisions of the Insurance Code Chapter 21A; (v) update obsolete references throughout the section due to the enactment of the nonsubstantive Insurance Code revision by the Legislature; and (vi) correct grammatical errors.

Comment: A commenter expressed support for the proposed amendments, stating that the amendments have the effect of correcting unintended consequences in the current rule. Commenters expressing support also stated that the amendments are consistent with and/or subject to the requirements of the NAIC's Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles No. 41.

Agency Response: The Department appreciates the supportive comments.

###### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: American National Insurance Company and Texas Association of Life & Health Insurers.

Against: None.

The amendments are adopted under the Insurance Code Article 1.39 and §36.001. Article 1.39 provides that the Commissioner may adopt rules as necessary to implement Article 1.39 (Subordinated Indebtedness). Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 7, 2006.

TRD-200606099

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 27, 2006

Proposal publication date: September 22, 2006

For further information, please call: (512) 463-6327

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## TITLE 34. PUBLIC FINANCE

### PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

#### CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

##### 34 TAC §329.1

The State Employee Charitable Campaign Policy Committee (SPC) adopts an amendment to §329.1, concerning audit and review requirements, without changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8340).

The adopted amendment to §329.1 requires certain charitable organizations to include a copy of an IRS Form 990 with their applications. The SPC requires the IRS Form 990 to assist in determining the percentage of a charitable organization's budget that was used for administrative expenses during the time period being reported in the application.

The adopted amendment to §329.1 provides a similar requirement for organizations participating in the statewide SECC campaign that §330.1 provides for the local SECC campaigns and requires an IRS Form 990 from all organizations applying to participate in the statewide SECC campaign. The SPC seeks to adopt rules that allow for consistent campaign practices at the local level and the statewide level to the extent that is feasible. The SPC is charged with ensuring a fair and equitable campaign. The IRS Form 990 is a broadly recognized and accepted form used for determining administrative costs of most non-profit charitable organizations, including those with small budgets and those with larger budgets. The SPC may adopt a requirement that all organizations submit an IRS Form 990 to ensure all organizations are reviewed fairly and consistently and to ensure that organizations that are approved to participate in the SECC spend donations within the statutory limits.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the adopted rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign and the authority of the SPC to use outside expertise and resources to determine an organization's eligibility to participate in the SECC.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606158

Kevin Van Oort

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

Effective date: November 30, 2006

Proposal publication date: October 6, 2006

For further information, please call: (512) 475-0387

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#### CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

##### 34 TAC §330.1

The State Employee Charitable Campaign Policy Committee (SPC) adopts an amendment to §330.1, concerning audit and review requirements, without changes to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8340).

The adopted amendment to §330.1 requires certain charitable organizations to include a copy of an IRS Form 990 with their applications. The SPC requires the IRS Form 990 to assist in determining the percentage of a charitable organization's budget that was used for administrative expenses during the time period being reported in the application.

The adopted amendment to §330.1, provides a similar requirement for organizations participating in the local SECC campaigns that §329.1 provides for the statewide campaign and requires an IRS Form 990 from all organizations applying to participate in an SECC campaign. The SPC seeks to adopt rules that allow for consistent campaign practices at the local level and the statewide level to the extent that is feasible. The SPC is charged with ensuring a fair and equitable campaign. The IRS Form 990 is a broadly recognized and accepted form used for determining administrative costs of most non-profit charitable organizations, including those with small budgets and those with larger budgets. The SPC may adopt a requirement that all organizations submit an IRS Form 990 to ensure all organizations are reviewed fairly and consistently and to ensure that organizations that are approved to participate in the SECC spend donations within the statutory limits.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees,

the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the adopted rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign and the authority of the SPC to use outside expertise and resources to determine an organization's eligibility to participate in the SECC.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200606159

Kevin Van Oort

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

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For further information, please call: (512) 475-0387

## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 421. STANDARDS FOR CERTIFICATION**

##### **37 TAC §421.3, §421.5**

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §421.3, concerning minimum standards set by the commission, and §421.5, concerning definitions, in Chapter 421, entitled Standards for Certification. The amendments are adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6185), and will not be republished.

The proposed amendment to §421.3 adds, in the functional position description for structural fire protection personnel, the words "in English" in subsection (b)(1)(A) to clarify that the required language competencies refer to competency in English. The proposed amendment to §421.5(43)(A)(ii) and (iii) updates the name of the Department of State Health Services, to reflect that state agency's name change; and rewords the language for clarity.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606168

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: December 3, 2006

Proposal publication date: August 4, 2006

For further information, please call: (512) 936-3821

## **CHAPTER 423. FIRE SUPPRESSION**

### **SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION**

#### **37 TAC §423.1, §423.13**

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §423.1, concerning minimum standards for structure fire protection personnel, and §423.13, concerning International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 423, entitled Fire Suppression. The amendments are adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6186), and will not be republished.

The adopted amendments to both rules change the wording of the term "medical emergency training" to "emergency medical training" to reflect the standard wording of the commonly used term. The purpose of the amendments is to clarify rule language.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3821

## **CHAPTER 425. FIRE SERVICE INSTRUCTORS**

### 37 TAC §425.1

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §425.1, concerning minimum standards for fire service instructor certification, in Chapter 425, entitled Fire Service Instructors. The amendment is adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6186), and will not be republished.

The proposed amendment: (1) deletes language in subsection (a) that states that the effective date of Chapter 425 is March 1, 2006 (this date has now passed and it is no longer necessary to make it explicit in the text of the rule); and (2) clarifies in subsection (c) that out of state training may meet the completion of the required competencies but does not equate to years of experience in a required position. Experience is defined in a different section.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
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For further information, please call: (512) 936-3821



## CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

### SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

#### 37 TAC §439.1, §439.19

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §439.1, concerning general requirements, and §439.19, concerning procedures regarding state-administered examinations. The amendments are adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6187), and will not be republished.

The proposed amendment to §439.1 changes the examination for Head of Department certification to an examination that will be based on National Fire Protection Association Standard (NFPA) 1021, Chapter 7.

The proposed amendment to §439.19 adds a new provision that the new Head of Department examination will consist of 50 active

questions, with the option of adding up to five pilot questions, for a maximum time allotment of one hour.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
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For further information, please call: (512) 936-3821



## CHAPTER 449. HEAD OF A FIRE DEPARTMENT

### SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

#### 37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (TCFP) adopts amendments to §449.3, concerning minimum standards for certification as head of a suppression fire department, and §449.5, concerning minimum standards for certification as head of a prevention only department in Chapter 449, entitled Head of a Fire Department. The amendments are adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6188), and will not be republished.

The purpose of the amendments is to change the examination requirement for certification as Head of Department.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
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For further information, please call: (512) 936-3821



## CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§451.3, 451.5, 451.7, 451.203, 451.205, and 451.207, concerning minimum standards for Fire Officer I and II certification, including examination requirements and International Fire Service Accreditation Congress (IFSAC) seals in Chapter 451, entitled Fire Officer. The amendments are adopted without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6189), and will not be republished.

The purpose of the amendments is to reflect recent name changes made to Chapter 425 Fire Service Instructor levels and requirements to the National Fire Protection Association Standard for Fire Officer.

No comments were received on the proposed amendments.

### SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

#### 37 TAC §§451.3, 451.5, 451.7

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.  
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Texas Commission on Fire Protection  
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For further information, please call: (512) 936-3821



### SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

#### 37 TAC §§451.203, 451.205, 451.207

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas

Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 13, 2006.

TRD-200606174  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: December 3, 2006  
Proposal publication date: August 4, 2006  
For further information, please call: (512) 936-3821



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§97.2, 97.11, 97.19, 97.241, and 97.283; and adopts new §97.223 in Chapter 97, governing Licensing Standards for Home and Community Support Services Agencies, without changes to the proposed text published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7289).

The amendments and new section are adopted to set forth criteria that will be used to determine if a conviction will be a bar to a home and community support services agency (agency) licensure or participation in agency management. The amendments are adopted to add definitions, correct a cross-reference, and eliminate some of the offenses that are bars to agency licensure in current rule language. The adopted amendments move the list of relevant crimes to a new section on offenses barring agency licensure or participation in agency management. The amendments are also adopted to make certain denials of an initial license or renewal of a license discretionary, rather than mandatory. The amendment to §97.283 is adopted to add the specific provisions that an agency must follow in accordance with the Advance Directives Act, Health and Safety Code, Chapter 166.

DADS received a comment from the Texas Association for Home Care in support of the adoption.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §97.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of



services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606153  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: December 1, 2006  
Proposal publication date: September 8, 2006  
For further information, please call: (512) 438-3734



## **SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE**

### **40 TAC §97.11, §97.19**

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606154  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: December 1, 2006  
Proposal publication date: September 8, 2006  
For further information, please call: (512) 438-3734



## **SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES**

### **DIVISION 2. CONDITIONS OF A LICENSE**

#### **40 TAC §97.223**

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606155  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: December 1, 2006  
Proposal publication date: September 8, 2006  
For further information, please call: (512) 438-3734



### **DIVISION 3. AGENCY ADMINISTRATION**

#### **40 TAC §97.241**

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606156

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: December 1, 2006

Proposal publication date: September 8, 2006

For further information, please call: (512) 438-3734



#### **DIVISION 4. PROVISION AND COORDINATION OF TREATMENT AND SERVICES**

##### **40 TAC §97.283**

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study

and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2006.

TRD-200606157

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: December 1, 2006

Proposal publication date: September 8, 2006

For further information, please call: (512) 438-3734



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plan

State Board for Educator Certification

### Title 19, Part 7

TRD-200606179

Raymond Glynn

Acting Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Filed: November 13, 2006



## Proposed Rule Reviews

Texas Water Development Board

### Title 31, Part 10

The Texas Water Development Board (Board) files this notice of intent to review Title 31, Texas Administrative Code (TAC), Part 10, Chapter 353, Introductory Provisions, in accordance with the Texas Government Code, §2001.039. Concurrently with this notice, the Board has filed a notice of proposed rulemaking to amend §353.122 regarding Procedures for Collecting a Delinquent Obligation.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 353 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Jim Bateman, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [jim.bateman@twdb.state.tx.us](mailto:jim.bateman@twdb.state.tx.us) or by fax at (512) 463-5580.

TRD-200606226

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: November 15, 2006



The Texas Water Development Board (the Board) files this notice of intent to review Title 31, Texas Administrative Code (TAC), Part 10, Chapter 375, Clean Water State Revolving Fund, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the rules set forth in this chapter continues to exist although particular rules may require amendments to reflect current federal and state regulatory changes.

As required by §2001.039, Texas Government Code, the Board will make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 375 continues to exist and will publish its proposal to readopt and/or readopt with amendments for public comments in the near future once its review has concluded. The comment period will last 30 days beginning with the publication of a notice to readopt and/or readopt the provisions in this chapter.

Comments or questions regarding this rule review may be submitted to Michelle A. McFaddin, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [michelle.mcfaddin@twdb.state.tx.us](mailto:michelle.mcfaddin@twdb.state.tx.us) or by fax at (512) 463-5580.

TRD-200606228

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: November 15, 2006



Texas Youth Commission

### Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption, amendment, or repeal Chapter 91 (Program Services), Chapter 93 (Youth Rights and Remedies), and Chapter 95 (Youth Discipline).

The commission will determine whether the reasons for adopting the sections under review continue to exist. Any changes to the sections proposed as a result of this rule review will be published in the Proposed Rules section of the *Texas Register*.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to [deanna.lloyd@tyc.state.tx.us](mailto:deanna.lloyd@tyc.state.tx.us).

TRD-200606150

Neil Nichols

General Counsel

Texas Youth Commission

Filed: November 9, 2006



## Adopted Rule Reviews

Texas Optometry Board

## **Title 22, Part 14**

The Texas Optometry Board readopts without change the following rules contained in Chapters 271, 272, 273 and 275, Title 22, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist:

### **Chapter 271. Examinations**

§271.1. Definitions.

§271.2. Applications.

§271.3. Jurisprudence Examination Administration.

§271.5. Licensure Without Examination.

§271.6. National Board Examination.

### **Chapter 272. Administration**

§272.1. Open Records.

§272.2. Historically Underutilized Businesses.

§272.3. Bid and Purchasing Protest Procedures.

### **Chapter 273. General Rules**

§273.1. Surrender of License.

§273.2. Use of Name of Retired or Deceased Optometrist.

§273.3. Contact Lenses as Prize or Premium.

§273.4. Fees (Not Refundable).

§273.5. Limited License for Clinical Faculty.

§273.6. Provisional License.

§273.7. Inactive Licenses.

§273.8. Renewal of License.

§273.9. Public Interest Information.

§273.10. Licensee Compliance with Guaranteed Student Loan Corporation.

§273.11. Public Participation in Meetings.

§273.12. Profile Information.

### **Chapter 275. Continuing Education**

§275.1. General Requirements.

§275.2. Required Education.

The proposed rule review was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7580).

No comments were received.

The rule review was conducted pursuant to Texas Government Code §2001.039. This concludes the review of rules in Chapters 271, 272, 273 and 275.

TRD-200606231

Chris Kloeris

Executive Director

Texas Optometry Board

Filed: November 15, 2006



Texas Water Development Board

## **Title 31, Part 10**

Pursuant to the notice of proposed rule review published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8389), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal of Title 31, Texas Administrative Code (TAC), Part 10, Chapter 365, Investment Rules, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 365 continue to exist and readopts the rules. The board concurrently adopts amendments to §365.13(a) and (b) concerning Authorized and Suitable Investments. This completes the board's review of 31 TAC Chapter 365, Investment Rules.

TRD-200606224

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: November 15, 2006



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas State Affordable Housing Corporation

### Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) to multifamily developers for the development of affordable multifamily housing in Texas financed by private activity bonds (to be issued by TSAHC) and low income housing tax credits (to be issued by the Texas Department of Housing and Community Affairs). The Corporation has set forth specific criteria for the development of multifamily housing in four targeted areas of housing need; rehabilitation, senior, rural, and supportive housing. The RFP can be viewed on TSAHC's web site ([www.tsahc.org](http://www.tsahc.org)) in the Multifamily Bond Programs section. Proposals will be due at the TSAHC offices in Austin by 2:00 p.m. on January 5, 2007. Any questions about the Request for Proposals must be emailed or faxed to Katherine Closmann at [kclosmann@tsahc.org](mailto:kclosmann@tsahc.org) or (512) 477-3557. All questions and responses will be posted on TSAHC's web site.

TRD-200606232

David Long  
President

Texas State Affordable Housing Corporation  
Filed: November 15, 2006

## Office of the Attorney General

### Notice of Settlement

Texas Health and Safety Code, Texas Water Code, and Texas Clean Air Act.

Notice is hereby given by the State of Texas pursuant to Texas Water Code - 7.110 of the following proposed resolution of an environmental enforcement lawsuit. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Water Code.

Case Title and Court: *State of Texas v. Brian Crisp & Camie Crisp*, individually and d/b/a Camie's Tire Co., Cause No. GV505094, in the 201st District Court, Travis County, Texas

Nature of Defendant's Operations: The Crisps conducted a tire recycling operation located on FM 1783 near Gatesville in Coryell County. During investigations at the operation the Texas Commission on Environmental Quality documented noncompliance with restrictions and requirements concerning the storage and disposal of scrap tires on adjacent land. The Crisps ceased operations.

Proposed Agreed Judgment: The Agreed Final Judgment requires the Crisps to pay civil penalties in the amount of \$15,000, attorney's fees in the amount of \$5,000, and court costs. The judgment also enjoins Crisps from future scrap tire storage and disposal violations.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Ken Cross, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. To be considered, written comments must be received within 30 days of publication of this notice.

TRD-200606218

Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 15, 2006

## Texas Building and Procurement Commission

### Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Insurance, Division of Workers' Compensation, announces the issuance of a Request for Proposal (RFP) #303-7-10599. TBPC seeks a five (5) year lease of approximately 2,292 square feet of office space in Wichita Falls, Wichita County, Texas.

The deadline for questions is November 22, 2006 and the deadline for proposals is December 4, 2006 at 3:00 P.M. The award date is December 15, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at: [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=68038](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=68038)

TRD-200606206

Ingrid K. Hansen  
General Counsel  
Texas Building and Procurement Commission  
Filed: November 15, 2006

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following

project(s) during the period of November 3, 2006, through November 9, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 15, 2006. The public comment period for these projects will close at 5:00 p.m. on December 15, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Save Cedar Bayou, Inc.;** Location: The project cannot be accessed by automobile. It is located approximately 10 miles north-east of Rockport on the San Patricio/Aransas County Line between the Aransas National Wildlife Refuge and the San Jose Cattle Company Ranch. It is an approximately 3-linear-mile-long dredging project that would connect Mesquite Bay with the Gulf of Mexico. The project can be located on the U.S.G.S. quadrangle map entitled: Saint Charles Bay SE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Beginning in Mesquite Bay at approximately Zone 14; Easting: 713200; Northing: 3111800 and ending in the Gulf of Mexico at approximately Zone 14; Easting: 711000; Northing: 3105625. Project Description: The proposed Cedar Bayou/Vinson Slough Habitat Restoration Project is a dredging project designed to reconnect the Gulf of Mexico and Mesquite Bay. The purpose of this project is to restore the hydraulic connection between these two bodies of water, improve the wetlands and tidal marshes that are dependent on tidal exchange of water between the Gulf of Mexico and Vinson Slough, provide a route for fish passage and migration of fish, crab, shrimp, and other fish and wildlife, and minimize future maintenance dredging requirements. To maintain the pass as an open channel, it is proposed that 3,340,000 cubic yards of material be excavated from Cedar Bayou and Vinson Slough during dredging operations over the next 5 years. Approximately 2,678,600 cubic yards of material would be excavated during the first construction event; and 660,400 cubic yards would be excavated during maintenance dredging operations. The applicant proposes to dredge these connections in three sections. The first section, referred to as the Cedar Bayou Access Channel, will be excavated to a depth of approximately 4.25 feet below NAVD 88 with 1V:4H side slopes. The total length of the excavation along this northern section of Cedar Bayou is approximately 15,060 feet. The bottom width of the excavation will be 200 feet. The total acreage in the northern section of Cedar Bayou is approximately 73 acres. The main channel along Cedar Bayou would be excavated to a depth of approximately 13 feet below NAVD88. The bottom width of the cut will be approximately 328 feet, and the side slopes cut at a 1V:4H slope to the existing grade. This excavation will extend a total length of approximately 9,000 feet. The total acreage encompassed by the excavation in this southern section of Cedar Bayou is approximately 86.5 acres. The Vinson Slough channel will be excavated to a depth of approximately 12.79 feet below NAVD 88. The bottom excavation width will be approximately 328 feet and the side slopes cut at a 1V:4H slope to the existing grade. The total length of the excavation will be approximately 7,165 feet and will encompass approximately 73 acres. Approximately 3,245,000 cubic yards of beach quality sand that would be excavated during this project will be placed in the Gulf of Mexico, offshore of the mouth of the Cedar bayou opening to form an ebb delta. Additional placement areas for 95,000 cubic yards of material would be an existing leveed disposal area located along the western bank of Cedar Bayou. It is expected that up to 866 acres of offshore waters are to be filled to an elevation between 1 foot and 6 feet above NAVD88. The material would have a 1V:3H slope to the existing bottom. However, it is expected that the constructed delta will immediately begin to take a new shape due to forcing by waves and currents. The purpose of the proposed ebb delta is to reduce wave setup

at the mouth of the Bayou by pushing the location of wave breaking farther offshore. This should help to minimize the resistance to the flow out of Cedar Bayou. In addition, the delta will cause increased wave breaking along its seaward side and will redirect long shore sediment transport along the seaward side of the delta instead of along the Cedar Bayou shoreline, in effect bypassing the long shore sediment transport seaward of the mouth. Hydrologic models have shown that this will cause a reduction of the sediment plugging effect at Cedar Bayou and increase its longevity. Based on preliminary design calculations, it is estimated that 9.4 acres of discontinuous wetlands may be impacted during the proposed project. The acreage was calculated based on an accumulation of the wetland areas throughout the project region. While it is expected that 9.4 acres of wetlands may be impacted due to the excavation of Cedar Bayou and Vinson Slough, the project is expected to positively impact 22,000 acres of wetlands and/or submerged lands that are currently cut off from any significant source of water circulation. CCC Project No.: 07-0035-F1; Type of Application: U.S.A.C.E. permit application #24310 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: WHO Enterprises, LLC;** Location: The project is located on Corpus Christi Bay, along the north side of the Peoples Street T-Head access road, approximately 90 feet from the Shoreline Seawall, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 658580; Northing: 3075555. Project Description: The applicant proposes to construct a 50 by 100-foot floating dock structure to be held in place via a guide pile system. The floating dock structure will support a 40 by 80-foot yachting center. The yachting center is proposed to be a one-story building measuring approximately 3,200 square feet. The yachting center will contain a classroom, retail and exhibit area, kayak rental area, and a brokerage office. The guide piles will have an elevation of +18 ft. from the waterline and will be driven to grade via a pile driver. The pile driver and other marine equipment will be brought to the site via spud barge. Materials to construct the floating dock and one-story yachting center will be brought in via land and spud barge. The guide pile system will be designed to accommodate lateral forces from the dock and yachting center building and the vertical movement of the floating dock during tropical storm events. Water depth at the proposed project site is approximately 8 feet Mean High Water (MHW). MHW is 1.48 NGVD' 29. The bottom substrate at the project site is silty sand. The proposed project will also involve the construction of four 40 ft. x 4 ft. finger piers. The finger piers will be attached to a 135 by 8-foot main walk that is proposed to extend from the new yachting center eastward. The new finger piers will create 6 new boat slips that will each measure approximately 20 feet in width. There are no seagrasses present within the project area since it is in a dredged basin with water depths of approximately 8 feet. CCC Project No.: 07-0037-F1; Type of Application: U.S.A.C.E. permit application #24388 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Portofino Harbour;** Location: The project is located in Clear Lake, at the Portofino Harbour at One Portofino Plaza, in Clear Lake Shores, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 303748; Northing: 3270139. Project Description: The applicant proposes to conduct maintenance dredging in the marina basin and to discharge fill material into a 3.5-acre open water area to construct a place-

ment area. The average depth of the marina is approximately -4.5 feet to -7 feet mean low tide (MLT). The applicant proposes to excavate the basin to -10 feet MLT. Previous authorizations under Nationwide Permit 35 allowed maintenance dredging depths from -6.5 feet to -8 feet MLT. Approximately 22,000 cubic yards of material will be removed. The material will be placed on a 3.5-acre site that has subsided and has become open water. Clay material will be excavated from the entrance fairway on the eastern half of the marina. The clay material will be used to construct the 5-foot-tall levees. The base of the levees will be 20 feet wide with 2:1 side slopes. Decant water will flow through a 4-inch Faircloth Skimmer. The north side of the placement area will be covered with riprap to protect the levee from erosion of Clear Lake. After the clay material is removed by mechanical excavation techniques, the applicant will hydraulically dredge the fairways in the western half of the marina. The material will be pumped in the finger fairways in the eastern half of the marina. The force of the pumped material will be used to water-jet both the dredged material and the silt in the eastern fairways into the placement area. The material on the eastern end will either be mechanically excavated or hydraulically dredged and pumped into the disposal site. The eastern opening to the marina will be closed during all water jetting operations, and reinforced silt fencing will contain suspended sediments from entering Clear Lake. The silt fencing will remain in place until suspended sediments have settled out. CCC Project No.: 07-0041-F1; Type of Application: U.S.A.C.E. permit application #23597(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Lakeland Partners III, LP;** Location: The project is located in Offatts Bayou, at 7509 Broadway, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319901; Northing: 3240918. Project Description: The applicant proposes to construct a 0.86-acre marina, with associated pier structures and bulkhead. The applicant proposes to mechanically dredge along the shoreline to a uniform depth of -7 feet below mean high tide. Dredge material will be disposed of on the upland lot. No wetlands will be impacted by the proposed project. CCC Project No.: 07-0042-F1; Type of Application: U.S.A.C.E. permit application #24297 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Third Coast Concepts, Inc.;** Location: The project is located in the Gulf Intracoastal Waterway (GIWW), approximately 2,000 feet west of Scurlock Road, in Port O'Connor, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port O'Connor, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 750147; Northing: 3146830. Project Description: The applicant proposes to construct a 42-acre canal subdivision. The applicant proposes to dredge an access channel and canals out of uplands to between -4 and -7 feet below mean low water. Dredged material is proposed to be placed in an upland disposal area, north of the project site. Bulkheads are proposed along the interior shoreline. A marina is proposed at the landward end of the subdivision, with associated boat slips, fishing deck, and boat ramp. Eight T-head piers are proposed along the lots facing the GIWW. The proposed project will impact 0.17 acre of wetlands and special aquatic sites. CCC Project No.: 07-0046-F1; Type of Application: U.S.A.C.E. permit application #24284 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may

be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Cherokee Webster Development, LP;** Location: The project site is located on a 150-acre parcel of undeveloped land, adjacent to a tributary of Clear Creek, at 19301 Old Galveston Road, in Webster, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 296792; Northing: 3267683. Project Description: The applicant is requesting authorization to develop the abandoned Texas-Genco Power Plant property, in Webster, Harris County, Texas. The applicant is proposing to develop the upland portion of the property into a residential development. This aspect of the project would not involve impacts to waters of the United States, including wetlands, and is considered to be a separate and complete activity. The southern edge of the property abuts a tributary to Clear Creek. On this portion of the property, the applicant wishes to expand existing canals and to create new canals to create a marina and canal-lot development. This activity would involve the excavation of canals, in the dry, to be connected to the adjacent tributary upon completion of construction. The canals will be between 100 feet and 280 feet wide with a depth not to exceed the receiving water body. In addition, the canals will be oriented with the prevailing southeast wind. As a result of the proposed activity, approximately 43 acres of open water would be created. During excavation activities, 0.12 acre of jurisdictional wetlands would be impacted. All other wetlands on the site (11.88 acres) will be avoided. Compensation for impacts to waters of the United States involves the donation of a 42.1-acre tract located within the project area boundaries. This tract contains 10.01 acres of tidally influenced wetlands. CCC Project No.: 07-0048-F1; Type of Application: U.S.A.C.E. permit application #24389 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200606212

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: November 15, 2006

## ◆ ◆ ◆ Comptroller of Public Accounts

### Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces this notice of amendment of a contract with Lehman Brothers, Inc. 600 Travis Street, Suite 7200, Houston, Texas 77002 and Federated Investors, Inc., Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222 (Contractors). The amendment revises fees effective January 1, 2007.

The notice of request for proposals (RFP #127b) was published in the September 28, 2001, issue of the *Texas Register* (26 TexReg 7617).

The Contractors advise the Comptroller in Investment and Management and Related Services for the Texas Local Government Investment Pool (TexPool).

The total contract compensation amount is based on a percentage of funds under management.

The term of the contract is December 21, 2001 through August 31, 2007.

TRD-200606198

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 14, 2006



#### Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The notice of request for proposals (RFP #176b) was published in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5476).

The successful respondent will advise Comptroller in Investment and Management and Related Services for the Texas Local Government Investment Pool (TexPool).

The contract was awarded to: Lehman Brothers, Inc., 600 Travis Street, Suite 7200 Houston, Texas 77002, and Federated Investors, Inc., Federated Investors Towers, 1001 Liberty Avenue, Pittsburgh, PA 15222. The total contract compensation amount is based on a percentage of funds under management.

The initial term of the contract is November 9, 2006 through August 31, 2009, with services to begin on September 1, 2007. The Comptroller, on behalf of the Texas Treasury Safekeeping Trust Company, shall have the right to renew the contract for three (3) additional one-year terms one year at a time, through August 31, 2012.

TRD-200606199

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 14, 2006



### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/20/06 - 11/26/06 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/20/06 - 11/26/06 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-200606190

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 13, 2006



### Credit Union Department

#### Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from PIA MidAmerica Credit Union (Dallas) seeking approval to merge with Corner Stone Credit Union (Lancaster), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200606204

Harold E. Feeney

Commissioner

Credit Union Department

Filed: November 15, 2006



#### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Metro Medical Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work within ten (10) miles of the Metro Medical Credit Union offices located at 8828 Stemmons Freeway, Suite 113, Dallas, Texas 75247 and 5201 Harry Hines Blvd., Dallas, Texas 75235, to be eligible for membership in the credit union.

An application was received from BNSF Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located in a 10-mile radius of BNSF Credit Union's main office, located at 1619 Pecos, Amarillo, Texas 79102, to be eligible for membership in the credit union.

An application was received from Firstmark Credit Union, San Antonio, Texas to expand its field of membership. The proposal would permit persons who attend school in Dimmit, Frio, LaSalle, McMullen, and Zavala Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should



be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200606203  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: November 15, 2006



#### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

##### Application(s) to Expand Field of Membership- Approved

Firstmark Credit Union (#1), San Antonio, Texas (Amended) - Persons who attend school in Atascosa County, Texas.

Firstmark Credit Union (#2), San Antonio, Texas (Amended) - Persons who attend school in Bandera County, Texas.

Firstmark Credit Union (#4), San Antonio, Texas (Amended) - Persons who attend school in Comal County, Texas.

Firstmark Credit Union (#5), San Antonio, Texas (Amended) - Persons who attend school in Guadalupe County, Texas.

Firstmark Credit Union (#6), San Antonio, Texas (Amended) - Persons who attend school in Kendall County, Texas.

Firstmark Credit Union (#7), San Antonio, Texas (Amended) - Persons who attend school in Medina County, Texas.

Firstmark Credit Union (#8), San Antonio, Texas (Amended) - Persons who attend school in Wilson County, Texas.

TexasOne Community Credit Union, Houston, Texas - See *Texas Register* issue, dated September 29, 2006.

##### Application(s) to Amend Articles of Incorporation- Approved

Access Credit Union, Amarillo, Texas - See *Texas Register* issue, dated September 29, 2006.

Associated Credit Union of Texas, Deer Park, Texas - See *Texas Register* issue, dated September 29, 2006.

##### Articles of Incorporation- 50 Years to Perpetuity - Approved

Firstmark Credit Union, San Antonio, Texas

United Credit Union, Tyler, Texas

GECU, El Paso, Texas

Federal Employees Credit Union, Texarkana, Texas

Cabot & NOI Employees Credit Union, Pampa, Texas

Corpus Christi Postal Employees Credit Union, Corpus Christi, Texas

SAFE Credit Union, Beaumont, Texas

Waco Postal Credit Union, Waco, Texas

Amarillo Postal Employees Credit Union, Amarillo, Texas

Credit Union of Texas, Dallas, Texas

Concho Valley Credit Union, San Angelo, Texas

First Priority Credit Union, Abilene, Texas

T&FS Credit Union, Port Arthur, Texas

Neighborhood Credit Union, Dallas, Texas

Government Service Credit Union, Port Arthur, Texas

First Class American Credit Union, Fort Worth, Texas

Fort Worth City Credit Union, Fort Worth, Texas

Plus4 Credit Union, Houston, Texas

PosTel Family Credit Union, Wichita Falls, Texas

TRD-200606205

Harold E. Feeney

Commissioner

Credit Union Department

Filed: November 15, 2006



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 27, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 27, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Young Man Rhee dba A1 Dry Cleaners; DOCKET NUMBER: 2006-1207-DCL-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN103966875 and RN103966651; LOCATION: Channelview and Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning and/or drop station; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.11(e) and Texas Health & Safety Code (THSC), §374.102, by failing to renew the facilities' registration by completing and submitting the required registration forms; PENALTY: \$1,778; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Alpine; DOCKET NUMBER: 2005-1242-MLM-E; IDENTIFIER: RN103114690; LOCATION: Alpine, Brewster County, Texas; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; 30 TAC §305.125(1) and (11)(A), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14349001, Effluent Limitations and Monitoring Requirement Nos. 1, 2, 3, and 6, and 3.a., and the Code, §26.121(a), by failing to comply with the permitted effluent limits and by failing to submit discharge monitoring reporting data; PENALTY: \$15,432; Supplemental Environmental Project (SEP) offset amount of \$12,346 applied to a custom SEP to extend first-time service to ten low-income residences currently utilizing failing on-site sewage systems; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Ameron Fiberglass Composite Pipe Division USA; DOCKET NUMBER: 2006-1396-AIR-E; IDENTIFIER: RN100678440; LOCATION: Burkburnett, Wichita County, Texas; TYPE OF FACILITY: fiberglass pipe manufacturing; RULE VIOLATED: 30 TAC §122.121 and §122.241(b) and THSC, §382.085(b), by failing to timely renew a federal operating permit and continuing to operate with an expired permit; PENALTY: \$3,100; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Binh T. Nguyen dba Ann Drapers and Cleaners; DOCKET NUMBER: 2006-1670-DCL-E; IDENTIFIER: RN103967477; LOCATION: Bellaire, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Ballinger; DOCKET NUMBER: 2006-1102-PWS-E; IDENTIFIER: RN101409928; LOCATION: Ballinger, Runnels County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: \$765; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Brothers Together Inc. dba Deluxe Dry Cleaners and dba Enclave Cleaners; DOCKET NUMBER: 2006-1366-DCL-E; IDENTIFIER: RN104964713, RN104964747, and RN100565217; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning and/or drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; PENALTY: \$2,667; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Camelot Custom Homes, Inc.; DOCKET NUMBER: 2006-1570-WQ-E; IDENTIFIER: RN105008486; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: residential home construction; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain an authorization to discharge storm water associated with residential home construction; PENALTY: \$750; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210)

490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2828.

(8) COMPANY: Cerrito Gas Processing, L.L.C.; DOCKET NUMBER: 2006-0947-AIR-E; IDENTIFIER: RN102521150; LOCATION: Webb County, Texas; TYPE OF FACILITY: regenerative amine treating plant; RULE VIOLATED: 30 TAC §106.8(c) and THSC, §382.085(b), by failing to make records available at the request of TCEQ personnel which contained sufficient information to demonstrate compliance; PENALTY: \$1,090; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Chang Soo Yoo and Young Yoo dba Cullen Dry Cleaners; DOCKET NUMBER: 2006-1364-DCL-E; IDENTIFIER: RN100587229 and RN104061437; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: dry cleaning and/or drop stations; RULE VIOLATED: 30 TAC §337.10(e) and §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration forms; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration fees; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Custer Cleaners LLC dba Dry Clean City; DOCKET NUMBER: 2006-1636-DCL-E; IDENTIFIER: RN100610047; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$311; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Tuan Q. Tran dba Dior Cleaners; DOCKET NUMBER: 2006-1107-DCL-E; IDENTIFIER: RN104253869 and RN104964721; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning and/or drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration forms; PENALTY: \$2,074; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Sam Mohammed dba Dollar Ninety Nine Cleaners; DOCKET NUMBER: 2006-1406-DCL-E; IDENTIFIER: RN104991997; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Doyle Reid dba Doyle Reid's Cleaners & Laundry; DOCKET NUMBER: 2006-0894-DCL-E; IDENTIFIER: RN104979851, RN105019293, and RN104981337; LOCATION: Burnet, San Antonio, and Horseshoe Bay; Burnet, Bexar, and Llano Counties, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; PENALTY: \$3,555; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929 and 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2006-1066-AIR-E; IDENTIFIER: RN100210574; LOCATION:

Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 18423, Special Condition Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: \$7,900; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Expert Cleaners, Inc. dba Pro Cleaners; DOCKET NUMBER: 2006-1456-DCL-E; IDENTIFIER: RN104095054; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration forms; PENALTY: \$889; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Fallbrook Enterprises, Inc. dba Deluxe Cleaners 2; DOCKET NUMBER: 2006-1202-DCL-E; IDENTIFIER: RN104989967; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$347; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Firestone Polymers, LLC; DOCKET NUMBER: 2006-1308-AIR-E; IDENTIFIER: RN100224468; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: petrochemicals plant; RULE VIOLATED: 30 TAC §116.115(c)(1) and §122.143(4), Air Permit Number 2565, Special Condition (SC) 8, Federal Operating Permit (FOP) Number 1271, General Terms and Conditions and SC 10, and THSC, §382.085(b), by failing to operate Boiler E-B110 within the maximum waste hexane rate of 2.3 gallons per minute; 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), FOP Number 1271, SC 1C, and THSC, §382.085(b), by failing to keep daily log notations of operations; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number 1271, General Terms and Conditions, and THSC, §382.085(b), by failing to report deviations; 30 TAC §113.260 and §122.143(4), 40 CFR §63.118(a)(1), FOP Number 1271, SC 1D and 1H, and THSC, §382.085(b), by failing to keep hourly flare monitoring records; 30 TAC §113.260 and §122.143(4), 40 CFR §63.118(a)(1), FOP Number 1271, SC 1D and 1H, and THSC, §382.085(b), by failing to maintain temperature records; 30 TAC §113.260 and §122.143(4), 40 CFR §63.506(e)(6)(i), FOP Number 1271, SC 1D and 1H, and THSC, §382.085(b), by failing to submit the maximum achievable control technology Subpart U periodic report in a timely manner; 30 TAC §122.143(4), 40 CFR §63.118(a)(3), FOP Number 1271, General Terms and Conditions, and THSC, §382.085(b), by failing to maintain flow records for the direct fired thermal oxidizer and the regenerative thermal oxidizer collection systems; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number 1271, General Terms and Conditions, and THSC, §382.085(b), by failing to report a deviation on a deviation report; 30 TAC §§116.115(c)(1), 122.143(4), and 122.144(1)(I), Air Permit Number 292, SC 3, FOP Number 1271, SC 10, and THSC, §382.085(b), by failing to maintain 12-month rolling emissions records; and 30 TAC §122.143(4), §122.146(5)(C)(i), FOP Number 1271, General Terms and Conditions, and THSC, §382.085(b), by failing to report a deviation on the annual compliance certification report; PENALTY: \$20,792; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Mikyung Lim dba Fountain Place Cleaners; DOCKET NUMBER: 2006-1314-DCL-E; IDENTIFIER: RN103982427; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Tinh Nguyen dba Hi Quality Cleaners; DOCKET NUMBER: 2006-1536-DCL-E; IDENTIFIER: RN104155510; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,040; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Stanley Huber dba Huber Gardens Estates; DOCKET NUMBER: 2006-0879-PWS-E; IDENTIFIER: RN101175115; LOCATION: Ector County, Texas; TYPE OF FACILITY: mobile home park with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and (3)(A)(ii), and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to perform routine bacteriological sampling, by failing to provide public notice of the failure to perform routine bacteriological monitoring, by failing to collect four repeat samples for each total coliform-positive sample found, and by failing to provide public notice of the failure to collect repeat samples; PENALTY: \$1,488; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(21) COMPANY: Kyung Hughs dba Jen's Cleaners; DOCKET NUMBER: 2006-1707-DCL-E; IDENTIFIER: RN104208525; LOCATION: Copperas Cove, Coryell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: City of Kerrville; DOCKET NUMBER: 2006-1021-MWD-E; IDENTIFIER: RN100844802; LOCATION: Kerrville, Kerr County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010576001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$24,900; Supplemental Environmental Project (SEP) offset amount of \$24,900 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: La Moderna, Inc.; DOCKET NUMBER: 2006-1233-AIR-E; IDENTIFIER: RN100820703; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum seven pounds per inch absolute Reid vapor pressure requirement; PENALTY: \$1,490;

ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: Peter Xac dba Lucky Store; DOCKET NUMBER: 2006-1002-PST-E; IDENTIFIER: RN104956594; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: closed gasoline station; RULE VIOLATED: 30 TAC §334.54(b) and (c)(2), by failing to assure that vent lines are open and functioning and all piping, pumps, manways, and ancillary equipment are capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons and by failing to monitor tanks, which have been temporarily taken out of service, for releases; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Masters Resources, LLC; DOCKET NUMBER: 2006-1575-AIR-E; IDENTIFIER: RN100209774; LOCATION: Chambers County, Texas; TYPE OF FACILITY: pumping station for raw natural gas; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to submit a compliance certification; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Teresa Pate dba Matties Place; DOCKET NUMBER: 2006-1025-PWS-E; IDENTIFIER: RN102322476; LOCATION: Zavalla, Angelina County, Texas; TYPE OF FACILITY: service station with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the public water supply and by failing to provide public notification of the failure to conduct bacteriological sampling; PENALTY: \$2,010; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Tok Ward dba MHL Cleaners; DOCKET NUMBER: 2006-1386-DCL-E; IDENTIFIER: RN104953187; LOCATION: Carrollton, Denton County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Noorain, Inc. dba Country Cleaners, Joy Cleaners, Professional Cleaners, Deluxe Cleaners, and Country Cleaners; DOCKET NUMBER: 2006-1088-DCL-E; IDENTIFIER: RN104983952, RN104991393, RN104963517, RN104990049, and RN104989975; LOCATION: Houston and Katy, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for facilities 1 - 4; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form for facility number 5; PENALTY: \$5,157; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Ocean Mobile Home Park, LLC; DOCKET NUMBER: 2006-1592-PWS-E; IDENTIFIER: RN100928282; LOCATION: Chambers County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(h)(3) and (j), and THSC, §341.0351, by failing to attest that the completed work was substantially in accordance with the plan and change orders on file

with the commission and by failing to notify the Executive Director, in writing, of a significant change in storage and pressure maintenance capacities; 30 TAC §290.46(m), by failing to maintain the system's facilities and equipment in good working order and general appearance; and 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan for the system; PENALTY: \$315; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Carlos Castillo dba Olivas Paint & Body Shop; DOCKET NUMBER: 2006-1142-AIR-E; IDENTIFIER: RN104196902; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: auto body refinishing; RULE VIOLATED: 30 TAC §116.110(a)(4) and THSC, §382.085(b), by failing to satisfy the conditions for auto body refinishing facilities permitted by rule, prior to construction and operation; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: Chinh V. Phan dba P&T Cleaners; DOCKET NUMBER: 2006-1606-DCL-E; IDENTIFIER: RN103955928; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5423 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Danny Park dba Park Cleaners; DOCKET NUMBER: 2006-1042-DCL-E; IDENTIFIER: RN104096383; LOCATION: Mansfield, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: City of Port Arthur; DOCKET NUMBER: 2005-0884-MSW-E; IDENTIFIER: RN100225390; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.55(b)(2) and §330.111, Municipal Solid Waste (MSW) Permit 1815, Contaminated Water Plan and Site Operating Plan, Sections 4.0, 6.0, and 8.0, by failing to maintain a maximum one foot depth of leachate over the landfill liner and by failing to train facility personnel to inspect and provide screening for hazardous waste and polychlorinated biphenyls waste; 30 TAC §330.5(e)(4) and §330.117(c), by failing to prohibit disposal of whole scrap tires; 30 TAC §330.111 and §330.133(a) and (b), MSW Permit Number 1815, Site Operating Plan, Subsection 4.22, by failing to apply daily cover material in landfill cell numbers 29 and 41 and by failing to provide intermediate cover in landfill cell number 14; 30 TAC §330.133(f), by failing to promptly repair eroded landfill cover material; and 30 TAC §330.5(a) and §330.139, MSW Permit Number 1815, Site Operating Plan, Subsection 4.26, Contaminated Water Plan, Section 7.0, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of contaminated water; PENALTY: \$10,125; SEP offset amount of \$8,100 applied for a scrap tire disposal and processing facility will be established with use available to citizens free of charge; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: Tin Nguyen dba Rice Cleaners; DOCKET NUMBER: 2006-1482-DCL-E; IDENTIFIER: RN104449301; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Eloina G. Torres dba Royal Cleaners; DOCKET NUMBER: 2006-0649-DCL-E; IDENTIFIER: RN103954160; LOCATION: Palacios, Matagorda County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Kyong Allin dba Sassy Cleaners; DOCKET NUMBER: 2006-1481-DCL-E; IDENTIFIER: RN104442181; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$117; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(37) COMPANY: Oanh Hoang Ngo dba Sharpway Cleaners; DOCKET NUMBER: 2006-1342-DCL-E; IDENTIFIER: RN104958723; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: Lindsey Ngo dba Tammy's Cleaners; DOCKET NUMBER: 2006-1008-DCL-E; IDENTIFIER: RN103962635; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(39) COMPANY: Ahmed Jafferally dba Tip Top Cleaners; DOCKET NUMBER: 2006-1236-DCL-E; IDENTIFIER: RN104026539; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a), by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Iqbal Abdulaziz dba US Star Cleaners; DOCKET NUMBER: 2006-1235-DCL-E; IDENTIFIER: RN104004429; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a), by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Epifanio Villarreal,

(210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200606202

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 14, 2006



## Notice of District Petition

Notice issued November 11, 2006

TCEQ Internal Control No. 07032006-D02; Terrabrook Cinco Ranch Southwest, L.P. (Petitioner) filed a petition for creation of Cinco Southwest Municipal Utility District No. 3 of Fort Bend County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Residential Funding Corporation, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 842.1 acres of land located in Fort Bend County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village of the State of Texas. By Ordinance No. 2006-131, effective February 14, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$67,950,000.

## INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at

a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200606208

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2006



### Notice of Water Quality Applications

The following notices were issued during the period of November 7, 2006 through November 9, 2006.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

CITY OF ATHENS has applied for a renewal of TPDES Permit No. 10143-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,027,000 gallons per day. The facility is located east of Onemile Creek and approximately 3,100 feet northwest of the intersection of Prairieville Street and State Highway 19 in Henderson County, Texas.

BROOKELAND INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13092-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located on the east side of State Highway Loop No. 149, approximately 1,000 feet south of the intersection of State Highways 149 and 165 in Sabine County, Texas.

C & R WATER SUPPLY, INC. has applied for a renewal of TPDES Permit No. 14264-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 3.1 miles west of Interstate Highway 45 and approximately 350 feet south of League Line Road in Montgomery County, Texas.

CAYUGA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13574-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 3.8 miles southeast of the City of Cayuga on U.S. Route 287 in Anderson County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 23 has applied for a renewal of TPDES Permit No. 11485-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 1.3 miles northeast of the intersection of U.S. Highway 290 and Fairbanks-North Houston Road at 7214 Woodland West Drive, on the north bank of Whiteoak Bayou in Harris County, Texas.

HOLIDAY HARBOR WATER/WASTE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13145-001,

which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 4,000 feet north of the intersection of State Highway 156 and Farm-to-Market Road 224, and approximately 4.2 miles southeast of the intersection of U.S. Highway 190 and State Highway 156 in San Jacinto County, Texas.

ISP SYNTHETIC ELASTOMERS LP which operates a synthetic rubber manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0002487000 to authorize the removal of the 24-hour acute biomonitoring testing requirement at Outfall 001; add the discharge of fire hydrant water and potable water at a daily average dry weather flow not to exceed 200,000 gallons per day via Outfall 001; and decrease the flow monitoring frequency from three per day to once per day and revise the flow sample type from instantaneous to record at Outfall 001. The current permit authorizes the discharge of steam condensate and non-process area storm water at a daily average dry weather flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located at 1615 Main Street, immediately east of the City of Port Neches, Jefferson County, Texas.

CITY OF KEMP has applied for a renewal of TPDES Permit No. 10695-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 0.8 mile west-southwest of the intersection of State Route 274 and U.S. Route 175, approximately 1.5 miles southwest of the City of Kemp in Kaufman County, Texas.

CITY OF MABANK has applied for a renewal of TPDES Permit No. 10579-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 6,000 feet west of the intersection of U.S. Highway 175 and Farm-to-Market Road 90 in Kaufman County, Texas.

MARINE QUEST-HIDDEN COVE, L.P. has applied for a renewal of TPDES Permit No. WQ0013785001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located approximately 1.75 miles south of Farm-to-Market Road 720 and approximately 3.0 miles west of Farm-to-Market Road 423 in Denton County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 32 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the addition of an interim phase discharge of treated domestic wastewater at a daily average flow not to exceed 460,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located approximately 4,500 feet south of the intersection of Farm-to-Market Road 2920 and Kuykendahl Road, approximately 9,500 feet northeast of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas.

### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200606209

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2006



## Notice of Water Rights Application

Notice issued November 13, 2006

APPLICATION NO. 08-2319A; The City of Saint Jo, P.O. Box 186, Saint Jo, Texas 76265, Applicant or Owner, has applied for an amendment to Certificate of Adjudication No. 08-2319 to add eight (8) additional diversion points, and to add mining and industrial purposes to the authorized water and four (4) exempt reservoirs pursuant to TWC 11.143. The diversion points and reservoirs are located on unnamed tributaries of Clear Creek; Deep Branch; and a tributary of Elm Fork Trinity River, Trinity River Basin, in Montague and Cooke County. The application was received on January 26, 2006. Additional information and fees were received on January 27, March 24, April 3, May 30, and June 22, 2006. The application was declared administratively complete and accepted for filing on July 21, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual

members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200606207

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2006



## General Land Office

### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry E. Patterson, Commissioner of the General Land Office, accepted for filing as Galveston County NRC §33.136 Sketch 39, a coastal boundary survey, submitted by Sidney Bouse, Licensed State Land Surveyor, conducted in April 2006, locating the following shoreline boundary:

Mean High Water line of part of Division 4, Section 11 of the Hall & Jones partition of the Trimble and Lindsey Survey, Section 4, of Galveston Island, located S 55 degrees W 16.7 miles from the Galveston County courthouse.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director Survey Division, Texas General Land Office, at (512) 463-5223.

TRD-200606151

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: November 10, 2006



## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Provider Payment Rates

**Hearing.** The Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed payment rates for the Residential Care (RC) program, assisted living/residential care services under the Community Based Alternatives (CBA AL/RC) program, and assisted living/residential care services under the Consolidated Waiver (CW) program. The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective January 1, 2007.

The public hearing will be held on December 12, 2006, at 9:00 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu, HHSC Rate Analysis, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200, telephone number (512) 491-1358, by December 8, 2006, so that appropriate arrangements can be made.

**Written and oral comments.** Written comments regarding the payment rates may be submitted in lieu of or in addition to oral comments presented at the public hearing and must be submitted by 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC Rate Analysis, P.O. Box 85200,

MC H-400, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Ms. Cantu, HHSC Rate Analysis, MC H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu at (512) 491-1998.

**Briefing package.** A briefing package describing the proposed reimbursement rates will be available, upon request, no later than November 27, 2006. Interested persons may request a copy of the briefing package by contacting Irene Cantu at (512) 491-1358. Briefing packages also will be available at the hearing.

**Methodology and justification.** The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(d)(2)(B) for the CBA AL/RC program, and 1 TAC §355.506(a) for the CW program.

TRD-200606222

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 15, 2006

## Department of State Health Services

### Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: William W. Cowan, D.D.S., Fort Worth, R08897; Plainview Chiropractic, Plainview, R21804; Flavia La Nell Thomas, D.O., Houston, R26004; Sunil Reddy Cheruku, M.D., Austin, Z01415.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200606221

Cathy Campbell

General Counsel

Department of State Health Services

Filed: November 15, 2006

### Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 TAC §289.205, has revoked the following certificates of registration: Heart Institute for C.A.R.E., P.A., Amarillo, R04712, November 10, 2006; James G. Price, D.D.S., Corsicana, R10483, November 10, 2006; Gentle Touch Dentistry, Alice, R21407, November 10, 2006; Maryam Hariri, D.D.S., Inc., Spring, R21418, November 10, 2006; D. Scott Coats, D.M.D., Lewisville, R23625, November 10, 2006; Parker Road Surgery Center, Plano, Z01055, November 10, 2006.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200606220

Cathy Campbell

General Counsel

Department of State Health Services

Filed: November 15, 2006

## Texas Higher Education Coordinating Board

### Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, the Texas Higher Education Coordinating Board ("Board") announces this notice of consulting contract award.

The notice of request for offers was published in the June 14, 2006, issue of the *Texas Register* (31 TexReg 5398).

The consultant will assist the Board in administrative oversight of the various teacher education activities at the member institutions of the Texas Association of Developing Colleges (TADC) by: (1) facilitating and coordinating a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of TExES/ExCET preparation; (2) working in collaboration with the Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of TExES/ExCET preparation; (3) facilitating and coordinating college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation; and (4) reporting progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

The contract was awarded to: Ms. Genevieve Brembry, Executive Director, Texas Association of Developing Colleges, Inc., 1140 Empire Central, Suite 550, Dallas, TX 75247. The total amount of this contract is not to exceed \$35,000.00.

The term of the contract is November 8, 2006 through August 31, 2007. The final report is due on or before August 3, 2007.

TRD-200606164

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 10, 2006

Teacher Quality Program for Higher Education (CFDA No. 84.367B) Notice Inviting Applications for New Awards under



the Teacher Quality Grants Program (Public Law 107-110) for Implementation During the Period May 1, 2007 - May 31, 2008.

**PURPOSE:** To provide assistance to universities, colleges, and educational non-profit organizations collaborating with high-need Texas school districts for significant projects designed to improve the quality of instruction and student performance in mathematics and science.

**DEADLINE FOR TRANSMITTAL OF APPLICATIONS:** January 9, 2007

**RFP AVAILABLE:** November 7, 2006

**APPLICATIONS AVAILABLE:** (available on website) November 30, 2006

**AVAILABLE FUNDS:** \$5,600,000

**ESTIMATED RANGE OF AWARDS:** \$80,000 - \$90,000

**ESTIMATED NUMBER OF AWARDS:** 50 - 60

**PROJECT PERIOD:** May 1, 2007 - May 31, 2008

**BUDGET PERIOD:** 13 Months

**APPLICABLE REGULATIONS:**

- (a) Public Law 107-110;
- (b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86;
- (c) Audit Requirements under OMB Circular A-133 for public colleges and universities, and for independent colleges and universities; and
- (d) OMB Circular A-21: Cost Principles for Educational Institutions; and OMB Circular A-102, Part 80: Subpart A-C, Section 80.1-80.35 (see Appendix D).

For more information, go to the Teacher Quality website: <http://www.utdanacenter.org/teacherquality/rfp.php>.

TRD-200606131

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 9, 2006

## **Texas Department of Housing and Community Affairs**

Public Comment Period and Hearing Schedule for the Proposed Texas Action Plan for Disaster Recovery (Plan) to Use Community Development Block Grant (CDBG) Funding to Assist with the Recovery of Distressed Areas Related to the Consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005

The Texas Department of Housing and Community Affairs (TDHCA) announces a public comment period and hearing schedule for a proposed Plan to use US Department of Housing and Urban Development CDBG funding associated with Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, approved June 15, 2006). This law provides Texas with approximately \$428.7 million of Federal funds designated for "necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, or Wilma."

The public comment period for this document runs from Thursday, November 16, 2006 through close of business on Monday, November 27, 2006. On November 16, 2006, the document will be available for review at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Printed copies of the document will be available upon request by calling 1-800-525-0657 or (512) 475-3976. To enhance the ability of persons with limited English proficiency to provide comment, the public comment notification and Plan are also being published in Spanish and Vietnamese.

Public hearings will be held at the following locations and times:

Austin

Rusk Building

Room #227

208 E. 10th Street

Tuesday, December 5

6:00 p.m.

Houston

City Council Annex Chambers

Public Level

900 Bagby

Stumpf Board Room

Wednesday, November 6

12:00 p.m.

and

Beaumont

South East Texas Regional Planning Commission

2210 Eastex Freeway

Thursday, December 7

12:00 p.m.

Public comment will be accepted directly at the public hearings or in writing. Written comment may be mailed to: TDHCA, Division of Policy and Public Affairs, P.O. Box 13941, Austin, TX 78711-3941, or faxed to (512) 469-9606, or sent via email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us).

Individuals who require special assistance to participate in a hearing should contact TDHCA at least three days prior to the scheduled hearing date so that appropriate arrangements can be made. Individuals who require a language interpreter for the hearing should contact Jorge Reyes at (512) 475-4577. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at (800)735-2989.

For more information on the hearings, please contact TDHCA at 1-800-525-0657 or (512) 475-3976.

Período para comentarios del público y horario de audiencias sobre el Plan de Acción de Recuperación para Desastres de Texas (Plan) propuesto para usar el Subsidio de Desarrollo de la Comunidad (CDBG por sus siglas en inglés) para ayudar en la recuperación de las áreas afectadas con relación a las consecuencias de los huracanes Katrina, Rita, y Wilma en el Golfo de México en 2005

El Departamento de la Vivienda y Asuntos de la Comunidad de Texas (TDHCA) anuncia el período para comentarios del público y el horario de audiencias sobre el Plan propuesto para utilizar los fondos del Departamento de la Vivienda y el Desarrollo Urbano de Estados Unidos (CDBG por sus siglas en inglés) asociado con el capítulo 9 del Título

II del Acta de Apropiações Suplementarias de Emergencia para la defensa, la guerra global contra el terror y la recuperación de huracanes del 2006 (Ley Pública 109-234, aprobada el 15 de junio de 2006). Esta ley proporciona a Texas con aproximadamente \$428.7 millones de dólares en fondos federales diseñados para "los gastos necesarios relacionados con el alivio por el desastre, la recuperación a largo plazo, y la restauración de la infraestructura en las zonas afectadas y las más dañadas relacionadas con las consecuencias de los huracanes Katrina, Rita y Wilma."

El período para comentarios del público sobre este documento será el jueves 16 de noviembre de 2006 hasta el cierre de horas hábiles del 24 de noviembre de 2006. El 16 de noviembre de 2006, el documento estará disponible para su revisión en [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) Las copias impresas del documento estarán disponibles sobre pedido llamando al 1-800-525-0657 ó (512) 475-3976. Para mejorar la habilidad de las personas con conocimientos limitados del inglés para poder hacer comentarios, la notificación de comentarios del público y del Plan también serán publicados en los idiomas español y vietnamita.

Las audiencias públicas serán celebradas en las siguientes localidades y horarios:

Austin

Rusk Building

Room #227

208 E. 10th Street

Martes 5 de diciembre

6:00 p.m.

Houston

City Council Annex Chambers

Public Level

900 Bagby

Miercoles 6 de diciembre

12:00 p.m.

y

Beaumont

South East Texas Regional Planning Commission

2210 Eastex Freeway

Jueves 7 de diciembre

12:00 p.m.

Los comentarios del público serán aceptados directamente en las audiencias públicas o por escrito. Los comentarios por escrito pueden ser enviados a: División de Política y Asuntos Públicos, P.O. Box 13941, Austin, TX 78711-3941, o por fax (512) 469-9606, o enviado vía email a [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us).

Las personas que necesiten asistencia para tomar parte en una audiencia deben comunicarse a TDHCA por lo menos tres días antes de la fecha programada de las audiencias para que puedan hacerse los arreglos apropiados. Las personas que necesiten un intérprete en su idioma para las audiencias, deben comunicarse con el señor Jorge Reyes al (512) 475-4577. Las personas que necesiten aparatos o servicios auxiliares para escuchar, favor de comunicarse con la señora Gina Esteves, empleada responsable de ADA al (512) 475-3943 o al servicio Relay Texas (800) 735-2989.

Para más información sobre las audiencias favor de comunicarse a TDHCA al 1-800-525-0657 o al (512) 475-3976.

Lòch Trình Nìeàu Traàn vàø Giai Nhoãn Tieáp Nhaãn YÙ Kieán Coâng Chuùng cho Nèa AÙn Keá Hoaïch Khaéc Phuïc Thaùm Hoïa cuûa Texas (Keá Hoaïch) ñeà Sôû Dùõng Ngaân Quyõ Trôï Caáp Phaùt Trieån Coäng Ñoàng (CDBG) ñeà Giuùp Khoài Phuïc Caùc Khu Vöïc Bò AÙnh Hôõùng do Haäu Quaù cuûa Côn Baõo Katrina, Rita, vàø Wilma taïi vuøng Vòngh Meã Taây Cô naêm 2005.

Sôû Gia Cỗ vàø Hoaït Ñoäng Coäng Ñoàng Texas (TDHCA) thoâng baùo lòch trình ñieàu traàn vàø giai ñoãn tieáp nhaãn yù kieán ñoàng goùp cuûa coâng chuùng cho ñeà aùn Keá Hoaïch sôû dùõng ngaân quyõ CDBG cuûa Sôû Gia Cỗ vàø Phaùt Trieån Ñoà Thò Hoa Kyø lieân quan tôùi Chöông 9, Tieâu Ñeà II cuûa Ñaõ Luaät Phaân Boá Ngaân Saùch Phuï Theâm cho Trööøng Hôïp Khaãn Caáp veà Quoác Phoøng, Ñaáu Tranh Choáng Khuùng Boá Toaøn Caàu, vàø Khaéc Phuïc Thaùm Hoïa do Baõo, 2006 (Coäng Luaät 109-234, ñöôïc pheâ chuaån ngaøy 15 thaùng Saùu, 2006). Theo ñieàu luaät naøy, tieâu bang Texas ñöôïc nhaãn khoaùng \$428.7 trieäu ngaân quyõ lieân bang daønh rieäng cho “caùc khoaùn chi phí caàn thieát lieân quan tôùi hoaït ñoäng khaéc phuïc thaùm hoïa, khoài phuïc daõi haïn, vàø tu boá cô sôû haï taàng taïi caùc khu vöïc bò aùnh hôõùng vàø thieát haï naëng neà nhaát do haäu quaù cuûa caùc côn baõo Katrina, Rita, hoaëc Wilma.”

Giai ñoãn tieáp nhaãn yù kieán cuûa coâng chuùng veà taøi lieäu naøy seõ keuo daõi töø thòu Naêm, ngaøy 16 thaùng Möôøi moät, 2006 tôùi cuoái giôø laøm vieäc thòu Saùu, ngaøy 24 thaùng Möôøi moät, 2006. Vaoø ngaøy 16 thaùng Möôøi moät, 2006, taøi lieäu naøy seõ ñöôïc ñaêng treân [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) ñeà coâng chuùng xem xeùt. Caùc baùn in sao cuûa taøi lieäu naøy seõ ñöôïc cung caáp khi coù yeâu caàu. Xin goïi soá 1-800-525-0657 hoaëc (512) 475-3976. Ñeà giuùp nhöõng ngöôøi coù trình ñoà thoâng thaõo Anh ngöõ ñoàng goùp yù kieán ñeà daøng hôn, thoâng baùo veà vieäc tieáp nhaãn yù kieán cuûa coâng chuùng vàø Chöông Trình seõ ñöôïc in baèng tieáng Taây ban nha vàø tieáng Vieät.

Caùc buoãi ñieàu traàn coäng coäng seõ ñöôïc toå chöùc taïi caùc ñòa ñieãm vàø ngaøy giôø sau ñaây:

Austin

Rusk Building

Room #227

208 E. 10th Street

6 giôø chieàu thòu Ba, ngaøy 5 thaùng Möôøi hai, 2006

Houston

City Council Annex Chambers

Public Level

900 Bagby

12 giôø tröa thòu Tö, ngaøy 6 thaùng Möôøi moät, 2006

vàø

Beaumont  
South East Texas Regional Planning Commission  
2210 Eastex Freeway  
12 giờ trưa thứ Năm, ngày 7 tháng Mười hai, 2006

YU kiến nhận xét của công chúng sẽ được tiếp nhận trực tiếp tại các buổi  
hội thảo hoặc qua thư. Xin gửi thư góp ý qua đường bưu điện tới: TDHCA,  
Division of Policy and Public Affairs, P.O. Box 13941, Austin, TX 78711-3941, hoặc  
gửi qua fax tới (512) 469-9606, hoặc qua thư điện tử tới [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us).

Những người cần trợ giúp cần biết để tham gia hội thảo xin liên lạc với  
TDHCA ít nhất ba ngày trước ngày hội thảo để thu xếp phòng tiếp  
trợ giúp thích hợp. Những người cần dịch vụ thông dịch cho buổi hội thảo  
xin liên lạc với ông Jorge Reyes tại số (512) 475-4577. Những người cần dừng  
cử tri thức hoặc các dịch vụ tri thức xin liên lạc với cô Gina Esteves, Nhân  
Viên Phục Vụ ADA, tại số (512) 475-3943 hoặc Relay Texas tại số (800) 735-  
2989.

Để biết thêm chi tiết về các buổi hội thảo, xin liên lạc TDHCA tại số 1-  
800-525-0657 hoặc (512) 475-3976.

TRD-200606234  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: November 15, 2006

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of AMERICAN LIFE INSURANCE  
COMPANY OF NEW YORK to WILTON REASSURANCE LIFE  
COMPANY OF NEW YORK, a foreign life, accident and/or health  
company. The home office is in Rye Brook, New York.

Any objections must be filed with the Texas Department of Insurance,  
within twenty (20) calendar days from the date of the *Texas Regis-*  
*ter* publication, addressed to the attention of Godwin Ohaechesi, 333  
Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200606211  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 15, 2006

◆ ◆ ◆  
**Notice of Application by a Small Employer Health Benefit  
Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer**

Notice is given to the public of the application of the listed small em-  
ployer health benefit plan issuer to be a risk-assuming health benefit  
plan issuer under Insurance Code §1501.312. A small employer health  
benefit plan issuer is defined by Insurance Code §1501.002(16) as a  
health benefit plan issuer offering, delivering, issuing for delivery, or  
renewing health benefit plans subject to the Insurance Code, Chapter

1501, Subchapters C-H. A risk-assuming health benefit plan issuer is  
defined by Insurance Code §1501.301(4) as a small employer health  
benefit plan issuer that does not participate in the Texas Health Rein-  
surance System. The following small employer health benefit plan is-  
suer has applied to be a risk-assuming health benefit plan issuer:

American Alternative Insurance Corporation.

The application is subject to public inspection at the offices of the  
Texas Department of Insurance, Legal Division - Nick Hoelscher, 333  
Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of American Alternative In-  
surance Corporation to be a risk-assuming health benefit plan issuer,  
you must submit your written comments within 60 days after publica-  
tion of this notice in the *Texas Register* to Gene C. Jarmon, General  
Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of In-  
surance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consid-  
eration of the application and comments, if the Commissioner is satis-  
fied that all requirements of law have been met, the Commissioner or  
his designee may take action to approve the applicant to be a risk-as-  
suming health benefit plan issuer.

TRD-200606152  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 10, 2006

◆ ◆ ◆  
**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been  
filed with the Texas Department of Insurance and are under considera-  
tion.

Application of BDG Benefits Design Group, Inc., a domestic third  
party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200606210

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 15, 2006



## Legislative Budget Board

### Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations. Sec. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

- (1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;
- (2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and
- (3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

#### Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2005. The largest component of Texas personal income is wage and salary disbursements, estimated at \$407.2 billion during calendar 2005. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated \$619.1 billion in calendar year 2005.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions, principally social security payroll taxes paid by employees and self-employed, are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be \$774.9 billion for calendar year 2005.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past sixteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

#### Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources listed alphabetically: (1) Texas Comptroller of Public Accounts, (2) Global Insight, (3) Moody's Economy.com, (4) University of North Texas Center for Economic Development & Research, and (5) Perryman Group. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors

of the economy. Previous memoranda published on the constitutional limit include more detailed discussion of the forecasting methods used. See the following issues of the Texas Register: (5 TexReg 4272), (7 TexReg 3727), (9 TexReg 5219), (11 TexReg 4590), (13 TexReg 4599), (15 TexReg 6876), (17 TexReg 7702), (19 TexReg 9053), (21 TexReg 10919), (23 TexReg 11472), (25 TexReg 11735), (27 TexReg 10977), and (29 TexReg 10612).

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2008-09 biennium over the 2006-07 biennium. These forecasts range from 1.1261 or 12.61 percent to 1.1702 or 17.02 percent.

Table 4 briefly outlines the sources and dates for the Texas personal income growth rates presented in Table 3.

The personal income growth rates shown in Table 3, or any more recent forecasts, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one or any combination of the growth rates shown in adopting a Texas personal income growth rate for the 2008-09 biennium.

#### **Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2006-07 Biennium**

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2006-07 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of November 15, 2006 the staff estimates this amount to be \$55,546,813,134. This item multiplied by the estimated rate of growth of Texas personal income from the 2006-07 biennium to the 2008-09 biennium produces the limitation on appropriations for the 2008-09 biennium under Article VIII, Section 22, of the Texas Constitution.

#### **Calculating the 2008-09 Limitation**

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2008-09 biennium may be illustrated by selecting a growth rate and applying it to the 2006-07 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth rate is adopted, current estimates suggest a limitation on 2008-09 biennial appropriations from non-dedicated state taxes ranging from \$62.6 billion to \$65.0 billion.

#### **Method of Calculating the 2006-07 Appropriations from State Tax Revenue Not Dedicated by the Constitution**

As stated above, LBB staff estimates the amount of appropriations from state tax revenue not dedicated by the Constitution in the 2006-07 biennium to be \$55,546,813,134. This section details the sources of information used in this calculation.

Total appropriations for the 2006-07 biennium include those in the General Appropriations Act, Senate Bill No. 1 (S.B. 1), Seventy-ninth Legislature, plus any additional appropriations made in legislation passed by the Seventy-ninth Legislature for the 2006-07 biennium. Any subsequent appropriations made by the Eightieth Legislature for the 2006-07 biennium would also be included in total appropriations.

Section I of Table 6 shows for general revenue related funds the total amount of appropriations, the amount financed from constitutionally dedicated tax revenue, from non-tax revenue and the remainder--the amount financed from tax revenue not dedicated by the Constitution--which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund. The Game, Fish and Water Safety Account also receives tax revenue not dedicated by the Constitution, which is also included in the calculation of the limitation.

## **I. General Revenue Related Funds**

A. Appropriations are classified in this table as the following: (1) "Estimated to be" line item appropriations, (2) all other line item appropriations, and (3) appropriations made by the Seventy-ninth Legislature during the 3rd Called Special Session.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated-to-be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2006 amounts are based on actual 2006 expenditures. Amounts for fiscal year 2007 are taken from S.B. 1, Seventy-ninth Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 7 are from S.B. 1, Seventy-ninth Legislature. Appropriation figures have been adjusted to incorporate certain Article IX appropriations, as well as Governor's vetoes, House Bill 10 (Seventy-ninth Regular Session), House Bill 1 (Seventy-ninth First Called Session), House Bill 11 (Seventy-ninth Second Called Session) and other miscellaneous bills.

3. Appropriations made by the 79th Legislature during the 3rd Called Session: This subheading includes appropriations made during the 3rd Called Session in H.B. 1 (Property Tax Relief and Public School Finance), H.B. 3 (Comptroller of Public Accounts), H.B. 63 (Lamar University for Hurricane Damage), and H.B. 153 (Debt Service.)

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the \$67,939,232,595 of general revenue related fund appropriations, \$54,318,504,476 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution. By subtracting the appropriations financed from the known sources listed in items one through eight from the total of \$67,939,232,595 it can be established that appropriations totaling \$60,091,011,561 remain to be financed. (See item 9 in Table 6, Part B.)

Dedicated state tax revenues deposited into general revenue related funds are estimated to total \$3,230,129,052 during the 2006-07 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at \$10,390,599,067 for the 2006-07 biennium. (See third column of Table 6, Part B.)

General revenue related fund appropriations to be financed from non-dedicated tax revenue are shown in column four of Table 6, Part B. This amount totals \$54,318,504,476 for the 2006-07 biennium.

## **II. Appropriations from Funds Outside of General Revenue**

The Seventy-ninth Legislature passed H.B. 10 during the regular session. The bill appropriated \$2,030,100,000 out of the Economic Stabilization Fund, \$1,320,674,667 of which is authorized during the 2006-07 biennium.

The state imposes a sales tax and a motor vehicles sales tax pursuant to S.B. 5 of the Seventy-seventh Legislative Session that is deposited into the Emissions Reduction Plan Account. The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining five percent is deposited into the Game, Fish and Water Safety Account. The state also imposes taxes on the sale of fireworks that is deposited into the Rural Volunteer Fire Department Account.

Appropriations from tax revenue not dedicated by the Constitution in these accounts are included in this calculation. The appropriations and revenues are based on actual 2006 and estimated 2007 data.

### **Grand Total**

A grand total of \$69,691,269,006 in 2006-07 biennial appropriations is included in this analysis. Of this amount, \$3,230,129,052 is financed out of taxes dedicated by the State Constitution. Another \$10,914,326,820 is financed out of non-tax revenue. The remaining \$55,546,813,134 is financed out of tax revenue not dedicated by the

State Constitution. This amount serves as a base for calculating the limitation on 2008-09 biennial appropriations from non-dedicated state taxes, as required by Art. VIII, Section 22, of the Texas Constitution.

Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 1**  
U.S. DEPARTMENT OF COMMERCE PERSONAL  
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2005  
In Millions of Current Dollars

<b>Earnings by Place of Work</b>	<b>Amount</b>	<b>Percent of Total</b>
Wage and Salary Disbursements	\$407,206	65.8%
Supplements to Wages and Salaries	95,087	15.4
Proprietors' Income		
Farm	\$2,370	
Nonfarm	<u>114,387</u>	
Subtotal	<u>116,757</u>	<u>18.9</u>
Total Earnings by Place of Work	\$619,050	100.0%
<b>Derivation of Total Personal Income</b>		
Earnings by Place of Work (from above)	\$619,050	
Less: Personal Contribution for Social Insurance	\$30,226	
Plus: Adjustment for Residence	<u>(1,676)</u>	
Equals: Net Earnings by Place of Residence	\$587,148	75.8%
Plus: Dividends, Interest and Rent	91,791	11.8
Plus: Personal Current Transfer Receipts	<u>95,946</u>	<u>12.4</u>
Total Personal Income	\$774,885	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Annual Personal Income By Major Source and Earnings by Industry*, October 2006.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 2**  
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME  
1974-75 TO 2004-05 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1972-73	1974-75	1.291	29.1%
1974-75	1976-77	1.282	28.2
1976-77	1978-79	1.308	30.8
1978-79	1980-81	1.349	34.9
1980-81	1982-83	1.252	25.2
1982-83	1984-85	1.180	18.0
1984-85	1986-87	1.078	7.8
1986-87	1988-89	1.100	10.0
1988-89	1990-91	1.150	15.0
1990-91	1992-93	1.133	13.3
1992-93	1994-95	1.123	12.3
1994-95	1996-97	1.149	14.9
1996-97	1998-99	1.174	17.4
1998-99	2000-01	1.164	16.4
2000-01	2002-03	1.057	5.7
2002-03	2004-05	1.114	11.4



Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 3**  
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME  
USING FIVE ECONOMETRIC MODELS  
2006-07 BIENNIUM TO 2008-09 BIENNIUM

<b>Source of Forecast</b>	<b>2008-09 Texas Personal Income Growth Rate</b>
1. Texas Comptroller of Public Accounts	1.1261
2. Global Insight	1.1311
3. Moody's Economy.com	1.1384
4. University of North Texas Center for Economic Development & Research	1.1702
5. Perryman Group	1.1505

Note: The growth rates shown above can be interpreted in percentage terms. For example, the growth rate of 1.1311 for the Global Insight forecast of Texas personal income indicates estimated personal income growth of 13.11 percent for the 2008-09 biennium.

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 4**  
SUMMARY OF SOURCES AND METHODS FOR  
TEXAS PERSONAL INCOME GROWTH RATES FOR THE  
2008-09 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. Texas Comptroller of Public Accounts	Econometric	Spring 2006
2. Global Insight	Econometric	November 2006
3. Moody's Economy.com	Econometric	October 2006
4. University of North Texas Center for Economic Development & Research	Econometric	October 2006
5. Perryman Group	Econometric	November 2006

Source: Compiled by the Legislative Budget Board, November 2006.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 5**  
TWO ILLUSTRATIONS OF A POSSIBLE  
LIMIT ON 2008-09 BIENNIUM APPROPRIATIONS  
OF STATE TAX REVENUE NOT DEDICATED BY  
THE TEXAS CONSTITUTION  
In Millions of Dollars

1. 2006-07 Base	\$ 55,546.8	\$ 55,546.8
2. Illustrative Growth Rates	<u>X 1.1261</u>	<u>X 1.1702</u>
3. 2008-09 Limitation on Growth in Appropriations	<u>\$ 62,551.3</u>	<u>\$ 65,000.9</u>

Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriation

**TABLE 6**  
2006-07 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE LIMITATION BASE

I. General Revenue Related Funds	2006 Expenditures/
A. Appropriations	2007 Appropriations
1 "Estimated To Be" Line Item Appropriations in General Appropriations Act, 79th Legislature	
(a) Fiscal Programs - Comptroller of Public Accounts	\$1,081,469
A.1.1. Strategy: Voter Registration	
(b) Fiscal Programs - Comptroller of Public Accounts	4,274,278
A.1.2. Strategy: Miscellaneous Claims	
(c) Fiscal Programs - Comptroller of Public Accounts	194,303,307
A.1.4. Reimbursement - Beverage Tax	
(d) Fiscal Programs - Comptroller of Public Accounts	2,925,487
A.1.6. County Taxes - University	
(e) Fiscal Programs - Comptroller of Public Accounts	194,836,185
A.1.8. Unclaimed Property	
(f) Funds Appropriated to the Comptroller for Social Security/BRP	866,917,366
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	
(g) Employees Retirement System	1,626,037,044
A. Goal & B. Goal (GR Portion)	
(h) Department of State Health Services	4,567,699
Vendor Drug Rebates-Public Health	
(i) Health and Human Services	380,976,995
Vendor Drug Rebates-Medicaid	
(j) Health and Human Services	11,897,015
Premium Co-Payments, Low Income Children	
(k) Health and Human Services	2,815,624
Experience Rebates-CHIP	
(l) Health and Human Services	3,150,128
Vendor Drug Rebates-CHIP	
(m) Health and Human Services	
Cost Sharing - Medicaid Clients	
(n) Health and Human Services	97,311,069
Vendor Drug Rebates-Supplemental Rebates	
(o) Texas Education Agency	22,729,996
C.1.2. Strategy: Certification Exam Administration Educator Certification Exam Services	
(p) School For The Blind And Visually Impaired	228,215
C.1.1. Strategy: Educ Prof Salary Increases	
(q) School For The Deaf	386,229
C.1.1. Strategy: Educ Prof Salary Increases	
(r) Teacher Retirement System	2,240,374,111
A.1.1. Strategy: TRS - Public Education - (GR Portion)	
(s) Teacher Retirement System	424,469,092
A.1.2. Strategy: TRS - Higher Education Retirement (GR)	
(t) Teacher Retirement System	420,286,978
A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion)	
(u) Optional Retirement Program	197,272,555
A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(v) Office Of Court Administration, Texas Judicial Council	25,286
C.1.2. Strategy: Texasonline	
(w) Judiciary Section, Comptroller's Department	125,492,720
A. Goal - D. Goal (GR Portion)	

(x)	Department Of Public Safety E.4.1. Strategy: Texasonline	341,795
(y)	Department Of Housing And Community Affairs E.1.4. Strategy: Texasonline	23,160
(z)	Texas Lottery Commission A.1.7. Strategy: Lottery Operator Contract	194,499,550
(aa)	Texas Lottery Commission B.1.5. Strategy: Bingo Prize Fee Allocations	22,258,002
(ab)	Board Of Chiropractic Examiners A.1.2. Strategy: Texasonline	66,618
(ac)	Texas State Board Of Dental Examiners A.2.2. Strategy: Texasonline	383,932
(ad)	Funeral Service Commission A.1.2. Strategy: Texasonline	57,370
(ae)	Board Of Professional Geoscientists A.1.2. Strategy: Texasonline	52,660
(af)	Department Of Insurance A.2.4. Strategy: Texasonline	661,854
(ag)	Board Of Professional Land Surveying A.1.3. Strategy: Examination	14,735
(ah)	Board Of Professional Land Surveying A.1.4. Strategy: Texasonline	30,872
(ai)	Department Of Licensing And Regulation A.1.5. Strategy: Texasonline	656,064
(aj)	Department Of Licensing And Regulation D.1.2. Strategy: Cosmetology Texasonline	224,360
(ak)	Department Of Licensing And Regulation E.1.2. Strategy: Barbers Texasonline	60,000
(al)	Board Of Medical Examiners A.1.3. Strategy: Texasonline	504,396
(am)	Board Of Nurse Examiners A.1.2. Strategy: Texasonline	621,423
(an)	Optometry Board A.1.2. Strategy: Texasonline	32,183
(ao)	Structural Pest Control Board A.1.3. Strategy: Texasonline	189,855
(ap)	Board Of Pharmacy A.1.2. Strategy: Texasonline	364,221
(aq)	Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: Texasonline	240,535
(ar)	Board Of Plumbing Examiners A.1.2. Strategy: Texasonline	271,322
(as)	Board Of Podiatric Medical Examiners A.1.2. Strategy: Texasonline	8,555
(at)	Board Of Examiners Of Psychologists A.1.2. Strategy: Texasonline	60,476
(au)	Racing Commission B.1.2. Strategy: Texasonline	48,790
(av)	Real Estate Commission A.1.2. Strategy: Texasonline	584,310
(aw)	Residential Construction Commission A.1.2. Strategy: Texasonline	662,580
(ax)	Residential Construction Commission B.1.3. Strategy: Third-Party Inspections	370,423
(ay)	Savings And Loan Department B.1.4. Strategy: Texasonline	120,746
(az)	Board Of Tax Professional Examiners A.1.2. Strategy: Texasonline	16,250
(ba)	Board Of Veterinary Medical Examiners A.1.2. Strategy: Texasonline	64,490

Subtotal, "Estimated to Be"	<u>\$7,045,850,375</u>
2 Other Line Items in the General Appropriations Act, 79th Legislature	<u>\$57,027,082,220</u>
3 Appropriations made by the 79th Legislature during the 3rd Called Session	
(a) HB 1: Property Tax Relief and Public School Finance	3,825,000,000
(b) HB 3: CPA appropriation in Franchise Tax Bill	2,000,000
(c) HB 63: Lamar University for Hurricane Damage	34,000,000
(d) HB 153: Debt Service	5,300,000
Subtotal, Appropriations During the 3rd Called Session	<u>\$3,866,300,000</u>
TOTAL (General Revenue Related Fund Appropriations)	<u>\$67,939,232,595</u>

	<u>Total Appropriations</u>	<u>Dedicated State Tax Revenues</u>	<u>Non Tax Revenues</u>	<u>Non-Dedicated State Tax Revenue</u>
B. Source of Funding - General Revenue Related				
1 Parks	\$41,054,028			\$41,054,028
2 Occupation Tax Revenue for Public Schools	1,667,532,000	1,667,532,000		
3 Appropriations from GR Related Beginning Balances	802,565,096		473,091,470	329,473,627
4 Motor Fuels (Unclaimed Motorboat Refunds)	27,955,568			27,955,568
5 Motor Fuels Taxes	1,562,597,052	1,562,597,052		
6 Available School Fund Investment Income and Non-tax Revenue	1,700,089,983		1,700,089,983	
7 State Textbook Fund Revenue	5,042,320		5,042,320	
8 Foundation School Fund Revenue	2,041,384,987		2,041,384,987	
9 Appropriations from Other Revenue	60,091,011,561		6,170,990,308	53,920,021,253
SUBTOTAL(General Revenue Related)	<u>\$67,939,232,595</u>	<u>\$3,230,129,052</u>	<u>\$10,390,324,167</u>	<u>\$54,318,779,376</u>
II. Appropriations from Funds Outside of GR				
1 Account 0009 – Game, Fish, and Water Safety	170,700,150		167,213,738	3,486,412
2 Account 0599 – Economic Stabilization Fund	1,320,674,667		162,241,520	1,158,433,147
3 Account 5066 – Rural Volunteer Fire Department Insurance	1,716,410			1,716,410
4 Account 5071 – Emissions Reduction Plan	258,945,184		194,272,495	64,672,689
GRAND TOTAL	<u>\$69,691,269,006</u>	<u>\$3,230,129,052</u>	<u>\$10,914,326,820</u>	<u>\$55,546,813,134</u>

**Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations**

**TABLE 7  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2006-07 BIENNIUM**

	2006	2007	2006-2007 Biennium
General Revenue Funds "Recap" Amount	\$32,282,503,253	\$31,843,041,180	\$64,125,544,433
Less "Estimated to Be" Items:			
Fiscal Programs - Comptroller of Public Accounts	5,000,000	1,000,000	6,000,000
A.1.1. Strategy: Voter Registration (SB1, Article I-28)			
Fiscal Programs - Comptroller of Public Accounts	2,170,000	1,770,000	3,940,000
A.1.2. Strategy: Miscellaneous Claims (SB1, Article I-28)			
Fiscal Programs - Comptroller of Public Accounts	89,991,000	91,957,000	181,948,000
A.1.4. Reimbursement - Beverage Tax (SB1, Article I-28)			
Fiscal Programs - Comptroller of Public Accounts	1,600,000	1,300,000	2,900,000
A.1.6. County Taxes - University (SB1, Article I-28)			
Fiscal Programs - Comptroller of Public Accounts	78,400,000	82,300,000	160,700,000
A.1.8. Unclaimed Property (SB1, Article I-28)			
Funds Appropriated to the Comptroller for Social Security and BRP	432,260,137	441,831,793	874,091,930
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (SB1, Article I-33)			
Employees Retirement System A. Goal & B. Goal (GR Portion) (SB1, Article I-37)	801,418,310	841,585,859	1,643,004,169
Department of State Health Services Vendor Drug Rebates—Public Health (SB1, Article II-40)	1,722,113	1,293,665	3,015,778
Health and Human Services Vendor Drug Rebates—Medicaid (SB1, Article II-68)	209,224,289	173,977,599	383,201,888

Health and Human Services Premium Co-Payments, Low Income Children (SB1, Article II-68)	7,391,572	8,074,937	15,466,509
Health and Human Services Experience Rebates-CHIP (SB1, Article II-68)	0	0	0
Health and Human Services Vendor Drug Rebates-CHIP (SB1, Article II-68)	1,157,300	1,164,941	2,322,241
Health and Human Services Cost Sharing - Medicaid Clients (SB1, Article II-68)	0	0	0
Health and Human Services Vendor Drug Rebates-Supplemental Rebates (SB1, Article II-68)	49,776,173	39,963,038	89,739,211
Texas Education Agency C.1.2. Strategy: Certification Exam Administration Educator Certification Exam Services (SB1, Article III-2)	10,381,994	10,400,994	20,782,988
School For The Blind And Visually Impaired C.1.1. Strategy: Educ Prof Salary Increases (SB1, Article III-26)	94,949	194,647	289,596
School For The Deaf C.1.1. Strategy: Educ Prof Salary Increases (SB1, Article III-29)	147,422	302,229	449,651
Teacher Retirement System A.1.1. Strategy: TRS - Public Education - (GR Portion) (SB1, Article III-33)	1,139,378,709	1,184,953,857	2,324,332,566
Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (SB1, Article III-33)	196,444,057	206,266,259	402,710,316
Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion) (SB1, Article III-34)	210,780,824	219,212,057	429,992,881
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (SB1, Article III-37)	93,956,033	94,895,593	188,851,626
Office Of Court Administration, Texas	10,488	13,576	24,064

Judicial Council C.1.2. Strategy: Texasonline (SB1, Article IV-23)			
Judiciary Section, Comptroller's Department A. Goal - D. Goal (GR Portion) (SB1, Article IV-31)	72,463,017	77,505,185	149,968,202
Department Of Public Safety E.4.1. Strategy: Texasonline (SB1, Article V-44)	68,500	68,500	137,000
Department Of Housing And Community Affairs E.1.4. Strategy: Texasonline (SB1, Article VII-2)	19,120	19,120	38,240
Texas Lottery Commission A.1.7. Strategy: Lottery Operator Contract (SB1, Article VII-8)	93,142,490	93,142,490	186,284,980
Texas Lottery Commission B.1.5. Strategy: Bingo Prize Fee Allocations (SB1, Article VII-8)	10,979,500	10,801,500	21,781,000
Board Of Chiropractic Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-9)	38,832	38,832	77,664
Texas State Board Of Dental Examiners A.2.2. Strategy: Texasonline (SB1, Article VIII-17)	194,478	202,627	397,105
Funeral Service Commission A.1.2. Strategy: Texasonline (SB1, Article VIII-19)	25,000	25,000	50,000
Board Of Professional Geoscientists A.1.2. Strategy: Texasonline (SB1, Article VIII-21)	30,000	30,000	60,000
Department Of Insurance A.2.4. Strategy: Texasonline (SB1, Article VIII-25)	296,100	296,100	592,200
Board Of Professional Land Surveying A.1.3. Strategy: Examination (SB1, Article VIII-33)	6,555	6,555	13,110
Board Of Professional Land Surveying A.1.4. Strategy: Texasonline (SB1, Article VIII-33)	17,569	17,569	35,138
Department Of Licensing And Regulation A.1.5. Strategy: Texasonline (SB1, Article VIII-35)	368,000	368,000	736,000



Department Of Licensing And Regulation D.1.2. Strategy: Cosmetology Texasonline (SB1, Article VIII-35)	224,360	224,360	448,720
Department Of Licensing And Regulation E.1.2. Strategy: Barbers Texasonline (SB1, Article VIII-36)	60,000	60,000	120,000
Board Of Medical Examiners A.1.3. Strategy: Texasonline (SB1, Article VIII-41)	181,532	155,298	336,830
Board Of Nurse Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-44)	256,100	256,100	512,200
Optometry Board A.1.2. Strategy: Texasonline (SB1, Article VIII-47)	15,725	15,725	31,450
Structural Pest Control Board A.1.3. Strategy: Texasonline (SB1, Article VIII-49)	95,690	95,690	191,380
Board Of Pharmacy A.1.2. Strategy: Texasonline (SB1, Article VIII-52)	178,340	182,810	361,150
Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-55)	112,945	116,855	229,800
Board Of Plumbing Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-57)	135,000	135,000	270,000
Board Of Podiatric Medical Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-60)	4,130	4,130	8,260
Board Of Examiners Of Psychologists A.1.2. Strategy: Texasonline (SB1, Article VIII-62)	30,000	30,000	60,000
Racing Commission B.1.2. Strategy: Texasonline (SB1, Article VIII-64)	23,250	23,250	46,500
Real Estate Commission A.1.2. Strategy: Texasonline (SB1, Article VIII-68)	224,000	224,000	448,000
Residential Construction Commission A.1.2. Strategy: Texasonline	315,000	315,000	630,000

(SB1, Article VIII-72)

Residential Construction Commission B.1.3. Strategy: Third-Party Inspections (SB1, Article VIII-72)	300,000	300,000	600,000
Savings And Loan Department B.1.4. Strategy: Texasonline (SB1, Article VIII-75)	67,867	67,868	135,735
Board Of Tax Professional Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-83)	15,490	16,250	31,740
Board Of Veterinary Medical Examiners A.1.2. Strategy: Texasonline (SB1, Article VIII-90)	32,745	33,650	66,395
Subtotal, Line Items Shown Separately	<u>\$3,511,226,705</u>	<u>\$3,587,235,508</u>	<u>\$7,098,462,213</u>
Total Other Line Items	<u>\$28,771,276,548</u>	<u>\$28,255,805,672</u>	<u>\$57,027,082,220</u>

TRD-200606213  
John O'Brien  
Deputy Director  
Legislative Budget Board  
Filed: November 15, 2006

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000, \$10,000, and \$20,000.

D. Play Symbol Caption--the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



## Texas Lottery Commission

Instant Game Number 765 "Monthly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 765 is "MONTHLY BONUS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 765 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 765.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

Figure 1: GAME NO. 765 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DOLLAR BILL SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY

<b>\$50.00</b>	<b>FIFTY</b>
<b>\$200</b>	<b>TWO HUND</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$10,000</b>	<b>MO/20YRS</b>
<b>\$20,000</b>	<b>20 THOU</b>

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 765 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWL</b>	<b>\$12.00</b>
<b>TWN</b>	<b>\$20.00</b>
<b>TFR</b>	<b>\$24.00</b>

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$5.00, \$10.00, \$12.00, \$20.00, or \$24.00.

H. Mid-Tier Prize--A prize of \$50.00, \$60.00, or \$200.

I. High-Tier Prize--A prize of \$2,000, \$20,000, or \$10,000/MO (\$10,000 per month for 20 years).

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (765), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 765-0000001-001.

L. Pack--A pack of "MONTHLY BONUS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "MONTHLY BONUS" Instant Game No. 765 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a dollar bill play symbol, the player wins \$10,000 per month for 20 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;
  6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
  8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
  9. The ticket must not be counterfeit in whole or in part;
  10. The ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
  14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
  15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
  16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.
- 2.2 Programmed Game Parameters.
- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate non-winning Your Numbers play symbols on a ticket.

- C. No duplicate Lucky Numbers play symbols on a ticket.
- D. No more than four like non-winning prize symbols on a ticket.
- E. A non-winning prize symbol will never be the same as a winning prize symbol.
- F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e., 5 and \$5).
- G. The "dollar bill" and \$10,000 prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of \$5.00, \$10.00, \$12.00, \$20.00, \$24.00, \$50.00, \$60.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$60.00, or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. To claim a "MONTHLY BONUS" top level prize of \$10,000/MO for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. When claiming a "MONTHLY BONUS" Instant Game prize of \$10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of \$120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "\$2,400, 000".

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual payments to reach the total maximum payment of \$2,400,000.

3. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 765. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 765 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	2,600,000	5.77
\$10	800,000	18.75
\$12	200,000	75.00
\$20	200,000	75.00
\$24	100,000	150.00
\$50	200,000	75.00
\$60	50,000	300.00
\$200	7,750	1,935.48
\$2,000	235	63,829.79
\$20,000	63	238,095.24
\$10,000/MO	3	5,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 765 without advance notice, at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 765, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200606201  
Kimberly Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 14, 2006

### Public Utility Commission of Texas

#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 3, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Rapid Communications LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 33466 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33466.

TRD-200606175  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 13, 2006

#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 8, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Incorporated to Amend its State-Issued Certificate of Franchise Authority, Project Number 33476 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33476.

TRD-200606195  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 14, 2006



#### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 8, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in El Paso County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the Anthony and Canutillo Exchanges. Docket Number 33478.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas's Anthony and Canutillo exchanges. The proposed boundary amendment will transfer a small area from the Canutillo exchange to the Anthony exchange to allow AT&T Texas to provide local exchange telephone service to one customer in a remote location near the Anthony-Canutillo border.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 1, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33478.

TRD-200606176  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 13, 2006



#### Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 10, 2006, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of iBroadband Networks, Incorporated for Designation as an Eligible Telecommunications Carrier and as an Eligible Telecommunications Provider Designation. Docket Number 33481.

The Application: iBroadband Networks, Incorporated is requesting ETC/ETP designation in order to receive support from both the Federal Universal Service Support Mechanisms and the Texas Universal Service Fund. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. iBroadband Networks, Incorporated seeks ETC/ETP designation in the same service area in which Cedar Valley Communications, Incorporated is designated as an ETC and ETP.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 14, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33481.

TRD-200606196  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 14, 2006



#### Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 4, 2006, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition for Expanded Local Calling Service from the El Sauz Exchange to the Exchanges of Edinburg, McAllen, and Mission, Project Number 33303.

The petitioners in the El Sauz exchange request ELCS to the exchanges of Edinburg, McAllen, and Mission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 8, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 33303.

TRD-200606194  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 14, 2006



#### Notice of Termination of Southwestern Public Service Company's Transition to Competition Cost Recovery Rider

Docket Style and Number: Notice of Termination of Southwestern Public Service Company's Transition to Competition Cost Recovery Rider, Docket Number 33443.

Summary: Southwestern Public Service Company (SPS), doing business as Xcel Energy, hereby gives notice of its filing on October 30, 2006, with the Public Utility Commission of Texas (commission), of a notice of termination of SPS's transition to competition cost recovery rider. SPS has completed recovery of the \$5.9 million of transition to competition costs and has ceased billing customers under the rider previously authorized in Docket Number 25088, *Application of Southwestern Public Service Company to Recover Transition to Competition Costs Pursuant to §39.409 of PURA*, on May 30, 2002. SPS also request authority to credit \$109,552.29 of over-recovery to its customers through its Purchased Power Cost Recovery Factors and the termination of Tariff Sheet No. IV-162.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477.



Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33443.

TRD-200606217

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 15, 2006



## **South Texas Development Council**

### **Request for Proposals for the Provision of a Regional Law Enforcement Training Program**

The South Texas Development Council (STDC) is requesting proposals for the provision of basic and advance/specialized peace officers training. All basic and specialized training provided must be conducted in conformance with Commission on Law Enforcement Officer Standards and Education requirements. Only one contract will be awarded. The STDC reserves the right to reject any and all proposals received and to award a contract only upon availability of funding from the Governor's Office, Criminal Justice Division. Specifications, submittal requirements, and other information may be obtained from Mr. Juan E. Rodriguez, STDC, 1002 Dicky Lane, P.O. Box 2187, Laredo, TX 78044-2187, Tel: (956) 722-3995, Fax: (956) 722-2670.

TRD-200606192

Juan E. Rodriguez

Criminal Justice Coordinator

South Texas Development Council

Filed: November 15, 2006



## **Stephen F. Austin State University**

### **Notice of Consultant Contract Availability**

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

**PURPOSE:** Stephen F. Austin State University is seeking consulting services to develop a project evaluation design in coordination with key project staff with input from collaborating partners. The design will consist of qualitative and quantitative measures that directly assess the effectiveness of the project objectives, activities and outcomes as submitted and approved by the US Department of Education. The measures are: 1) The effectiveness of the partner network will be assessed by continuous input from each participating institution during partner meeting and through constant communication; 2) The effective and efficient articulation of two- and four-year degrees via the Internet, will be assessed by the number, percentage, and quality of students completing AAT degrees, transferring to university programs, completing baccalaureate degrees, completing certification requirements, and passing state certification exams; 3) The content and effectiveness of the on-line coursework and the five Internet modules designed to provide practical Spanish for all teachers in EC-4 classrooms, community college classrooms, and by school districts for in-service education will be evaluated using at a minimum, surveys of classroom teachers, parents, and school administrators; 4) The university on-line program will be evaluated using a number of measures; including student enrollment and transfer statistics; student, teacher and principal input surveys; and comparing the achievement of students completing on-line programs versus more traditional, face-to-face programs; 5) The ability of participating institutions to continue and expand the program after federal

funding ends will be assessed; 6) A model process will be developed for the future study on the impact of Internet-based teacher education instruction on public school students' learning, performance and achievement.

**ELIGIBLE APPLICANTS:** Applicants should have knowledge and experience in the areas of emphasis-standards based instruction and accountability, program evaluation, and educational policy. Consideration will be given to applicants with prior grant consulting experience with the University.

**SELECTION CRITERIA:** Evaluation will be made by the project director based upon evidence of the applicant's knowledge and experience in the areas specified above.

**CONTRACT COST:** The contract amount is anticipated to be approximately \$15,000 per year for a total of \$45,000 over a period of three years.

**DEADLINES & CONTACT INFORMATION:** Interested parties should contact Dr. Janice Pattillo prior to December 1, 2006 at (936) 468-2904 or by email at jpattillo@sfasu.edu.

TRD-200606165

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: November 10, 2006



## **Texas Water Development Board**

### **Request for Applications Agricultural Water Conservation Grants - Fiscal Year 2007**

The Texas Water Development Board (TWDB) requests the submission of Request for Applications (RFAs) for state Fiscal Year 2007 to provide agricultural water conservation grants. The total amount of the solicited grants awarded by the TWDB shall not exceed \$600,000 from the Agricultural Water Conservation Fund. Rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code, Chapter 367), guidelines, and instruction sheet are available upon request from the TWDB.

**Description of the Objectives and Purpose.** The TWDB's total grant contribution is estimated not to exceed the posted dollar value indicated. RFAs are requested for the following:

(1) Grants (not to exceed a total of \$250,000) to political subdivisions for irrigation water use metering projects to include the purchase, installation, and/or data collection services of irrigation meters with a requirement of providing multi-year data on type of crops, crop acres, rainfall, and irrigation water used (total and per acre by crop) for each meter installed. Metering projects must be located in counties with identified irrigation water needs and be relevant to recommended irrigation water management strategies in the most recent applicable regional or state water plans. Requests for meters must include the political subdivisions justification for the number of meters being requested.

(2) Grants (not to exceed a total of \$250,000) to state agencies and political subdivisions for programs involving demonstrations, education, technology transfer, training, or equipment purchases that will encourage and expedite the implementation of irrigation water conservation management strategies. Requests must be for programs that include counties with identified irrigation water needs and be relevant to recommended irrigation water management strategies in the most recent applicable regional or state water plans.

(3) Grants (not to exceed a total of \$100,000) to state agencies for an agricultural water conservation program for providing statewide technical assistance for agricultural water conservation practices that will assist in the implementation of agricultural water conservation water management strategy(s) identified in the most recent applicable regional water plan or state water plan.

**Description of Applicant Criteria.** The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

**Deadline for Submittal, Review Criteria and Contact Person for Additional Information.** Ten double-sided, double-spaced copies of a completed application must be filed with the TWDB within 45 days

of the publication of this RFA. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 531, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231. All applicants should obtain the TWDB's guidelines and instruction sheet for responding to the RFA. Requests for information may be directed to Ms. Kate McAfee at the preceding mailing address, or by e-mail at [kate.mcafee@twdb.state.tx.us](mailto:kate.mcafee@twdb.state.tx.us) or by calling (512) 936-6094.

TRD-200606229  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: November 15, 2006

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).